Submitted
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1 Affirmd

2487

Jno Strong
to write

Judge Davis

McWhirter
v
People
65. Ill

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 825.

The Bonds are to
~~the whole~~
Chicago & Rock
River Rail Road

THE TOWN OF COLOMA, PLAINTIFF IN ERROR,

VS.

DAVID W. EAVES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 5, 1875.

McWhirter, v The People
65. Ill. 290

Town bonds are to
[illegible] to the whole
Enterprise — ~~A vote~~
[illegible] submitted, authorizing
the sub [illegible] to
division — The Sup
Court of Ill say [illegible]
[illegible] or [illegible]

~~[illegible]~~ The vote
was to ~~the~~
capital stock
of ~~the~~ first
division of
~~the~~ Chicago
& Rock River
Rail Road

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the judges thereof, on Tuesday, the twentieth day of April, in the adjourned March term of said court, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the ninety-ninth year.

WILLIAM H. BRADLEY, *Clerk*.

DAVID W. EAVES
vs.
THE TOWN OF COLOMA.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the 27th day of August, A. D. 1874, came the said plaintiff, David W. Eaves, by Messrs. Grant and Smith, and L. M. Fisher, his attorneys, and filed in the office of the clerk of the circuit court of the United States for said district, at Chicago, in the district aforesaid, his præcipe for a writ of summons against said defendant, and also at the same time filed his bond for costs and declaration in said-entitled cause, which said præcipe, bond for costs, and 2 declaration are, respectively, in the words and figures following, to wit:

Præcipe.

In the circuit court of the U. S. for northern district of Illinois, Oct. term, '74.

DAVID W. EAVES
vs.
THE TOWN OF COLOMA, STATE OF ILLINOIS. } Precipe.

To the clerk of said court:

You are hereby requested to issue summons in the above-entitled cause in a plea of debt—three thousand and thirty-nine dollars and $\frac{31}{100}$ damages, $2,000 returnable according to the rules of said court.

GRANT AND SMITH AND
L. M. FISHER, *for Plff.*

(Endorsed:) Filed Aug. 27, '74. Wm. H. Bradley, clk.

Bond for costs.

Circuit court of the United States for the northern district of Illinois.

DAVID W. EAVES
v.
THE TOWN OF COLOMA, STATE OF ILLINOIS.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay all costs which may accrue to the opposite party or any of the officers of this court in pursuance of the 3 laws of the United States.

W. M. KNEISER.

(Endorsed:) Filed Aug. 27, 1874. Wm. H. Bradley, clk.

Declaration.

In the circuit court of the United States for the northern district of Illinois, October term.

DAVID W. EAVES
vs.
THE TOWN OF COLOMA, STATE OF ILLINOIS. } Declaration.

The town of Coloma was summoned to answer David W. Eaves in a plea of debt.

And thereupon the said David W. Eaves, who avers that he is a citizen of the State of Kansas, complains of the Town of Coloma, in the county of Whiteside and State of Illinois, which town he avers to be a municipal corporation created by existing under the laws, and a citizen of the State of Illinois:

For that the said town of Coloma, at said district, on the first day of January, 1872, by its certain writings-obligatory, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 19, 20, 21, 23, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, & 40, issued of that date, and delivered on the 15th day of January, 1872, signed by M. R. Adams, its supervisor, and J. D. Davis, its clerk,
4 and sealed with their seals, acknowledged itself to owe and be indebted to the Chicago and Rock River Railroad Company, or bearer, in the sum of five hundred (500) dollars, by each of said writings obligatory, to be paid on the first day of July, 1881, at the office of the treasurer of Whiteside County, State of Illinois.

And by said bonds the town of Coloma covenanted to pay interest thereon at the rate of ten per centum per annum, payable annually on the presentation and surrender of the coupons annexed thereto, at the office of the treasurer of Whiteside County aforesaid.

And for said interest, coupons or interest-warrants were annexed to each of said bonds; a copy of one of said bonds, and of one of each denomination of coupons, is hereto annexed, the others being exactly alike except as to numbers.

And said bonds recite that they are issued under and by virtue of a law of the State of Illinois entitled "An act to incorporate the Chicago and Rock River Railroad Company," approved March 24, 1869, and in accordance with the vote of the electors of said township of Coloma, at a regular election held July 28, 1869, in accordance with said law, and under a law of the State of Illinois entitled "An act to fund and provide for the paying of the railroad-debt of counties, townships, cities, and towns," in force April 16, 1869; and when this bond is registered in the State auditor's office of the State of Illinois the interest and
5 principal will be paid by the State treasurer, as provided by the last-mentioned law.

And the plaintiff further avers that said bonds have been duly registered in the State auditor's office of the State of Illinois, pursuant to said act of April 16, 1869, as from the certificate of the auditor of State, attached to each of said bonds, will more fully appear.

That he is the bearer of the coupons for interest on said bonds, which fell due on the first day of July, 1873, being twenty-five (25) coupons of twenty-two $\frac{91}{100}$ (22.91) dollars each, and also twenty-six (26) coupons of fifty (50) dollars each, that fell due on the same day, making in all eighteen hundred and seventy-two $\frac{75}{100}$ (1,872.75) dollars.

And the defendant has failed to provide funds for the payment of said instalment of interest, at the said treasurer's office of the State of Illinois, in accordance with said act of April 16, 1869, and has also neglected to pay the same, though the time of payment has long since elapsed.

And also for that, on the first day of January, 1874, at said district,
the said town of Coloma, by its certain writings-obligatory, Nos. 51, 52,
53, 54, 55, 61, 62, & 70, issued of that date, delivered on the fifteenth
day of January, 1872, signed by M. R. Adams, its supervisor, and J. D.
Davis, its clerk, and sealed with their seals, acknowledged itself to owe
and be indebted to the Chicago and Rock River Railroad Company, or
bearer, in the sum of one thousand (1,000) dollars, by each of said
6 writings obligatory, to be paid on the first day of July, 1881, at
the office of the treasurer of Whiteside County, State of Illinois;
and by said bonds the town of Coloma covenanted to pay interest
thereon at the rate of ten per cent. per annum, payable annually, on the
presentation and surrender of the coupons annexed thereto, at the office
of the treasurer of Whiteside County aforesaid.

And for said interest, coupons or interest-warrants were annexed to each of said bonds; a copy of one of said bonds, and of one of each denomination of coupons, is hereto annexed, the others being exactly alike except as to numbers.

And said bonds recite that they are issued under and by virtue of a law of the State of Illinois entitled "An act to incorporate the Chicago and Rock River Railroad Company," approved March 24, 1869, and in accordance with a vote of the electors of said township of Coloma, at a regular election held July 28, 1869, in accordance with said law, and under a law of the State of Illinois entitled "An act to fund and provide for the paying of the railroad-debts of counties, townships, cities, and towns," in force April 16, 1869; and when this bond is registered in the State auditor's office of the State of Illinois the interest and principal will be paid by the State treasurer, as provided by the last-mentioned law.

7 And the plaintiff further avers that said bonds have been duly registered in the State auditor's office of the State of Illinois, pursuant to said act of April 16, 1869, as from the certificate of the auditor of State attached to each of said bonds will more fully appear.

That he is the bearer of said coupons for interest on said bonds which fell due on the first day of July, 1873, being eight (8) coupons of forty-five $\frac{82}{100}$ (45.82) dollars each, and also eight (8) coupons of one hundred (100) dollars each, that fell due on the same day, making in all eleven hundred and sixty-six $\frac{56}{100}$ (1,166.56) dollars.

And the said defendant has failed to provide funds for the payment of said instalment of interest at the said treasurer's office of the State of Illinois, in accordance with said act of April 16, 1869, and has also neglected to pay the same, though the time of payment has long since elapsed.

Whereby the said town of Coloma has become liable to pay and an action has accrued to the plaintiff to have and recover of the said defendant the said instalments of interest, amounting in all to the sum of three thousand and thirty-nine $\frac{31}{100}$ (3,039.31) dollars, together with interest thereon at the rate of six (6) per cent. per annum from the first day of July, 1873, making his damages $2,000.

Wherefore the plaintiff sues and prays judgment.

GRANT & SMITH,
L. M. FISHER,
For Plff.

8 UNITED STATES OF AMERICA. [$1,000

COUNTY OF WHITESIDE,
State of Illinois, Town of Coloma :

Know all men by these presents that the township of Coloma, in the county of Whiteside and State of Illinois, acknowledges itself to owe and be indebted to the Chicago and Rock River Railroad Company or bearer in the sum of one thousand dollars, lawful money of the United States, which sum the said town of Coloma promises to pay to the Chicago and Rock River Railroad Company, or the bearer hereof, on the first day of July, in the year one thousand eight hundred and eighty-one, at the office of the treasurer of the county of Whiteside aforesaid, in the State of Illinois, on the presentation of this bond, with interest thereon from the first day of January, 1872, at the rate of ten per centum per annum, payable annually at the office of the treasurer of the county of Whiteside aforesaid, on the presentation and surrender of the annexed coupons.

[U. S. 5$ revenue-stamp.]

This bond is issued under and by virtue of a law of the State of Illinois entitled "An act to incorporate the Chicago and Rock River Railroad Company," approved March 24, 1869, and in accordance with a vote of the electors of said township of Coloma, at a regular election held July 28, 1869, in accordance with said law, and under a law of
9 the State of Illinois entitled "An act to fund and provide for the
paying of the railroad-debts of counties, townships, cities, and towns," in force April 16, 1869; and when this bond is registered in the State auditor's office of the State of Illinois the principal & interest will be paid by the State treasurer, as provided by said last-mentioned law.

In witness whereof the supervisor and town clerk of said town have hereunto set their hands and seals this first day of January, A. D. 1872.

(Signed) M. R. ADAMS, [SEAL.]
Supervisor.
(Signed) J. D. DAVIS, [SEAL.]
Town Clerk.

A copy of coupon.

$45.82.] INTEREST-WARRANT. [No. 51.

Town of Coloma.

The town of Coloma, State of Illinois, will pay to the bearer, on the first day of July, 1873, forty-five $\frac{82}{100}$ dollars, at the office of the treasurer of Whiteside County, being one year's interest on the bond numbered above.

(Signed) M. R. ADAMS,
Supervisor.
(Signed) J. D. DAVIS,
Town Clerk.

Copy of coupon.

$100.] INTEREST-WARRANT. [No. 51.

The town of Coloma.

The town of Coloma, State of Illinois, will pay to the bearer, on the first day of July, A. D. 1873, one hundred dollars, being one year's interest on the bond numbered above.

(Signed) M. R. ADAMS,
Supervisor.

10 (Signed) J. D. DAVIS,
Town Clerk.

Endorsement.

AUDITOR'S OFFICE, ILLINOIS,
Springfield, Jany. 2nd, 1872.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad-debts of counties, townships, cities, and towns," in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[L. S. AUDITORIAL SEAL.] (Signed) C. E. LIPPINCOTT,
Auditor P. A.

Copy of bond.

UNITED STATES OF AMERICA. [$500

COUNTY OF WHITESIDE,
State of Illinois, Town of Coloma :

Know all men by these presents that the township of Coloma, in the county of Whiteside and State of Illinois, acknowledges itself to owe & be indebted to the Chicago & Rock River Railroad Company or bearer in the sum of five hundred dollars, lawful money of the United States,
which sum the said town of Coloma promises to pay to the Chi-
11 cago & Rock River Railroad Company, or the bearer hereof, on
the first day of July, in the year one thousand eight hundred and eighty-one, at the office of the treasurer of the county of Whiteside aforesaid, in the State of Illinois, on the presentation of this bond, with interest thereon from the first day of January, A. D. 1872, at the rate of ten per centum per annum, payable annually at the office of the treasurer of the county of Whiteside aforesaid, on the presentation & surrender of the annexed coupons.

[U. S. revenue 50-c. stamp.]

This bond is issued under & by virtue of a law of the State of Illinois entitled "An act to incorporate the Chicago & Rock River Railroad Company," approved March 24th, 1869, & in accordance with the vote of the electors of said township of Coloma, at a regular election held July 28th, 1869, in accordance with said law, & under a law of the State of Illinois entitled "An act to fund & provide for the paying of the railroad debt of counties, townships, and cities," in force April 16th, 1869, & when this bond is registered in the State register's office of the State of Illinois the interest & principal will be paid by the State treasurer, as provided by last-mentioned law.

In witness whereof the supervisor & town clerk of said town have hereunto set their hands & seals this first day of January, A. D. 1872.

(Signed) M. R. ADAMS, *Supervisor.* [SEAL.]
(Signed) J. D. DAVIS, *Town Clerk.* [SEAL.]

12 *A copy of coupon.*

$50.] INTEREST-WARRANT. [No. 1.

Town of Coloma.

The town of Coloma, State of Illinois, will pay to the bearer on the first day of July, A. D. 1873, fifty dollars, at the office of the treasurer of Whiteside County, being one year's interest on the bond numbered above.

(Signed) M. R. ADAMS, *Supervisor.*
(Signed) J. D. DAVIS, *Town Clerk.*

A copy of coupon.

$22.91.] INTEREST-WARRANT. [No. 1.

Town of Coloma.

The town of Coloma, State of Illinois, will pay to the bearer on the first day of July, 1873, twenty-two $\frac{91}{100}$ dollars at the office of the treasurer of Whiteside County, being one year's interest on the bond numbered above.

M. R. ADAMS, *Supervisor.*
J. D. DAVIS, *Town Clerk.*

AUDITOR'S OFFICE,
Springfield, Illinois, January 2d, 1872.

I, Charles E. Lippencott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad-debts of counties, townships, cities, & towns," in force April 16th, 1869.

13 In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day & year aforesaid.

[L. S. AUDITORIAL SEAL.] (Signed) C. E. LIPPENCOTT,
Auditor P. A.

(Endorsed:) Filed Aug. 27, '74. Wm. H. Bradley, clk.

And on the same day, to wit, the 27th day of August, A. D. 1874, a writ of summons issued out of said clerk's office against said defendant, which said writ, together with the return of the marshal endorsed thereon, reads in the words and figures following, to wit:

Writ of summons.

Circuit court of the United States of America, northern district of Illinois, *ss.*

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon the town of Coloma, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of October next, to answer unto David W. Eaves of a plea of debt three thousand and thirty-nine dollars and thirty-one cents, to his damage, as he alleges, of two thousand dollars, and have you then and there this writ.

14 Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 27th day of August, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the 99th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Special deputy's return.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Know all men by these presents that I have appointed, and by these presents do appoint, Geo. H. Drake my true and lawful deputy to execute the annexed writ, David W. Eaves vs. The Town of Coloma, and to make return of the execution thereof according to law.

B. H. CAMPBELL, [SEAL.]
United States Marshal for the Northern District of Illinois.

I have served the annexed writ in the following manner, to wit, by reading the same to and in the presence and the hearing of Henry F. Batchelder, supervisor of said town of Coloma therein named, on the 4th day of September, A. D. 1874, and also by delivering to him, the said supervisor, a true copy thereof.

B. H. CAMPBELL,
United States Marshal,
By GEO. H. DRAKE,
Special Deputy.

15 Geo. H. Drake, being duly sworn, deposes and says that he served the annexed writ as stated in the foregoing return, and that the expense returned by him in addition to the fees was actually incurred, and that the same is according to law.

[NOTARIAL SEAL.] JOHN W. ALEXANDER,
Notary Public.

Sworn to before me this 4th day of September, A. D. 1874.

(Endorsed:) Filed Sept. 21st, A. D. 1874. Wm. H. Bradley, clerk.

And afterwards, to wit, on the 5th day of October, A. D. 1874, said defendant, by its attorney, filed in said clerk's office its demurrer to said declaration, which said demurrer is in the words and figures following, to wit:

Demurrer.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the seventh circuit and northern district of Illinois.

THE TOWN OF COLOMA, STATE OF ILLINOIS,
ads.
DAVID W. EAVES.

And the said town of Coloma, defendant in this suit, by F. Sackett, 16 its attorney, comes and defends the wrong and injury, when, &c., and says that the said declaration and each of the several counts thereof and the matters therein contained are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant.

And the said defendant, according to the form of the statute, &c., states and shows to the court here the following special causes of demurrer to the said declaration and to the several counts thereof:

1. It does not appear in the said declaration that the said writings-obligatory were ever delivered to any person entitled to receive the same.
2. It is not stated in the said declaration, or in either count thereof, that the several writings-obligatory, or any of them, were made, executed, or delivered by the said defendant, under any law of the State of Illinois authorizing the same, or that the said supervisor and clerk had any authority of law to issue the same.
3. It does not appear from the said declaration that the said plaintiff, or any other person, has ever made demand for the payment of said coupons, or any of them, at the office of the treasurer of said Whiteside County, where the said coupons are by their terms made payable.
4. It does not appear from the said declaration, nor from either count thereof, that the said defendant has been guilty of any breach of its undertaking by the terms of said bonds or coupons, or that it has
17 failed to comply with any obligation imposed upon said defendant by any law in reference thereto.
5. And also for that the said declaration is in other respects informal, uncertain, and insufficient.

Wherefore, for want of sufficient declaration, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action.

By F. SACKETT,
Defendant's Attorney.

(Endorsed:) Filed Oct. 5, 1874. Wm. H. Bradley, clk.

And afterwards, to wit, on the 6th day of October, A. D. 1874, in the adjourned October term of said court, in the record of the proceedings thereof in said-entitled cause, before Hon. Henry W. Blodgett, judge, is the following entry, to wit:

DAVID W. EAVES
vs. } Debt.
THE TOWN OF COLOMA.

Now come the parties, by their attorneys, and now comes on to be heard the demurrer of the defendant to the declaration filed herein, and after hearing the arguments of counsel the court sustains said demurrer, and on motion of the plaintiff, by his attorney, leave is given him to amend is declaration in ten days, and the defendant is hereby ruled to plead to the same in twenty days after notice of the filing of the same.

18 And afterwards, to wit, on the 8th day of October, A. D. 1874, said plaintiff, by his attorneys, filed in said clerk's office his amendment to his declaration in said-entitled cause, which said amendment is in the words and figures following, to wit:

Amendment to declaration.

In the circuit court of the United States for the northern district of Illinois.

DAVID W. EAVES
vs.
THE TOWN OF COLOMA. } Amendment to declaration.

Now comes the plaintiff and, by leave of the court first had and obtained, amends his declaration in said cause, and avers—

That the coupons, in the first count thereof described, were delivered to the plaintiff for value in the due course of trade.

That the said writings-obligatory in said first count mentioned were issued by said town of Coloma, under and by virtue of a law of the State of Illinois entitled "An act to incorporate the Chicago and Rock River Railroad Company," and in accordance with a vote of the electors of said township of Coloma, at a regular election held July 28, 1869, in accordance with said law, and under a law of the State of Illinois entitled "An act to fund and provide for the paying of the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

19 And that there was not at the time said coupons became due, nor has there ever since been, funds at the office of the treasurer of Whiteside County wherewith to pay said coupons in accordance with the tenor thereof.

And the plaintiff also amends the second count of the said declaration, and states that the coupons therein set forth were delivered to the plaintiff for value in the due course of trade.

That said writings-obligatory in said count described were issued by said town of Coloma under and by virtue of a law of the State of Illinois entitled "An act to incorporate the Chicago and Rock River Railroad Company," approved March 24, 1869, and in accordance with said law, and under a law of the State of Illinois, entitled "An act to fund and provide for the paying of the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

And that there was not at the time said coupons became due, nor has there ever since been, funds at the office of the treasurer of Whiteside County wherewith to pay said coupons in accordance with the tenor thereof.

Wherefore the plaintiff prays judgment as by his declaration he has already prayed.

GRANT & SMITH, & L. M. FISHER,
Attys. for Plff.

(Endorsed:) Filed Octr. 8th, 1874. Wm. H. Bradley, clk.

20 And afterwards, to wit, on the 26th day of October, A. D. 1874, said defendant, by its attorneys, filed in said clerk's office its demurrer to said amended declaration, which said demurrer is in the words and figures following, to wit:

Demurrer to amended declaration.

In the circuit court of the United States for the northern district of Illinois, to the October term, 1874.

DAVID W. EAVES
vs.
THE TOWN OF COLOMA, STATE OF ILLINOIS. }

And the said town of Coloma, defendant in this suit, by F. Sackett, its attorney, comes and defends the wrong and injury, where, &c., and says that the said amended declaration, and each and every count thereof, and the matters and things therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and that the said defendant is not bound by law to answer the same and this the said defendant is ready to verify.

And the said defendant, according to the form of the statute in such cases made and provided shows to the court here the following special causes of demurrer to the said amended declaration, and to the several counts thereof.

First. That it is nowhere alleged in the said declaration, or in either count thereof, that the said interest-coupons, or either of them, 21 were ever delivered by the said defendant to the said plaintiff, or to any other person authorized to receive the same.

Second. That there is no averment in the said declaration or in either count thereof, that the said interest-coupons in the said declaration mentioned, or either of them, were ever presented for payment at the office of the treasurer of the said county of Whiteside, or any offer made to surrender the same at the office of the said treasurer upon the payment thereof of any of them or any part thereof.

Third. And, also, for that the said declaration and each and every count thereof is in other respects uncertain, informal, and insufficient in law, &c., and this the said defendant is ready to verify.

Wherefore he prays judgment, &c.

F. SACKETT,
Atty. for said Deft.

(Endorsed:) Filed Oct. 26, 1874. Wm. H. Bradley, clk.

And afterwards, to wit, on the 28th day of October, A. D. 1874, in the adjourned October term of said court, in the record of the proceedings thereof in said-entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

DAVID W. EAVES
vs. } Debt.
THE TOWN OF COLOMA.

Now come the parties, by their attorneys, and now comes on 22 to be heard the demurrer of this defendant to the amended declaration herein, and after hearing the arguments of counsel, the court overrules said demurrer with leave to the defendant to plead by Monday morning next.

And afterwards, to wit, on the 2d day of November, A. D. 1874, said defendant, by its attorney, filed in said clerk's office its pleas, together with the affidavit of said attorney in support thereof; which said pleas and affidavit are respectively in the words and figures following, to wit:

Pleas.

In the circuit court of the United States for the northern district of Illinois, of the October term, 1874.

DAVID W. EAVES
vs. }
THE TOWN OF COLOMA, STATE OF ILLINOIS.

And the said town of Coloma, by F. Sackett, its attorney, comes and defends the wrong and injury, when, &c., and says that it does not owe the said sums of money above demanded, or any of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against it; and of this the said defendant puts itself upon the country, etc.

And for a further plea in this behalf, the said defendant says actio
non, because it says that the said writings-obligatory and the
23 said interest-coupons in the said declaration mentioned are not,
nor is either of them, its act and deed, &c.; and of this the said
defendant puts itself upon the country, &c.

And for a further plea in this behalf, said defendant says actio non, because it says that the legal voters of the said town of Coloma have never been in any manner notified to meet at the usual place of holding elections in said town or elsewhere for the purpose of voting for or against the said town subscribing to the capital stock of the said Chicago and Rock River Railroad Company, nor has the question of such subscription ever been in any manner submitted to the legal voters of said town, nor have the legal voters of said town ever voted upon that question; and this the said defendant is ready to verify. Wherefore it prays judgment, &c.

And for a further plea in this behalf, the said defendant says actio non, because it says that the legal voters of the said town of Coloma were never in any manner notified to meet at the usual place of holding elections in said town or elsewhere for the purpose of voting for or against the said town subscribing to the capital stock of the said Chicago and Rock River Railroad Company, nor has the question of said subscription ever been in any manner submitted to the legal voters of said town, nor have the legal voters of said town, or any of them, ever voted upon that question.

And the defendant avers that the said writings-obligatory
24 and the said coupons in the said declaration mentioned were, and
each of them was, made and delivered under the circumstances
and for the consideration following, that is to say: heretofore, to wit, on the 1st day of January, 1872, the said M. R. Adams, as the supervisor of said town, and professing to act for and behalf of said town, made a pretended subscription, in the name of said town, in the sum of $50,000 to the capital stock of the said railroad company; and in consideration thereof, & by way of payment therefor, the said M. R. Adams made and executed, as such supervisor, and the said J. D. Davis, as town-clerk of the said town, attested the said writings-obligatory and the said coupons in the said declaration mentioned, and the said Adams & Davis then and there delivered the said bonds and coupons to the said railroad company for the consideration aforesaid, and for no other consideration whatever, and the defendant avers that the said subscription so made to the said capital stock as aforesaid was made without any authority of law, and were void as against this defendant, and that the said bonds & coupons were made without any authority of law and without any good or valuable consideration therefor, & are void as against this defendant; and this the said defendant is ready to verify. Wherefore it prays judgment, &c.

And for a further plea in this behalf, said defendant says actio non,
because it says that by the said act of the legislature of the State
25 of Illinois entitled "An act to incorporate the Chicago and Rock
River Railroad Company," approved March 24, 1869, it was provided and declared that to aid in the construction of the road thereby authorized to be constructed by said company, any town organized under

the township organization laws of the said State of Illinois, along or near the route of said road, might subscribe to the capital stock of said company, but that no such subscription should be made until that question had been submitted to the legal voters of such township at an election held for that purpose, as provided in said act.

And further, that if it should appear that a majority of all the legal voters of such township, voting at such election, voted for subscription, it should be the duty of the supervisor of said township to subscribe to the capital stock of said railroad company, in the name of such township, the amount so voted; and that he should also execute to said company, in the name of such township, bonds bearing interest at ten per cent. per annum, which bonds should run for a term of not more than twenty years, and the interest on the same should be made payable annually, and signed by such supervisor, and attested by the clerk of said township.

And also that when such election should have been held, and bonds issued as aforesaid, it should be the duty of the clerk of said township to file with the county clerk of his county, within ten days after the
26 issuing of said bonds, a certificate of the amount of bonds issued, the rate of interest payable thereon, and the number of each bond.

And by the said act it was further enacted and provided that it should be the duty of the county clerk of said county, annually, after the execution and delivery of said bonds, to compute and assess upon all the taxable property returned by the assessor of such township a sum sufficient to pay the interest and costs of collection and disbursements upon all bonds so issued, which tax should be extended upon the collector's books as other taxes are, and when collected should be paid to the treasurer of the county. And further, that it should be the duty of the county treasurer to pay, on the presentation to him of the bonds issued by any such township, the amount due upon such bond for interest, out of any money in his hands for that purpose, and endorse any payment of interest upon said bond.

And the said defendant avers that within ten days after the issuing of the bonds in the said declaration mentioned, the town-clerk of the said town of Coloma filed with the county clerk of Whiteside County, that being the county in which said town is situated, certificates of the bonds so issued and the rate of interest payable thereon, and the number of each of the said bonds; and this the said defendant is ready to verify. Wherefore it prays judgment, &c.

And for a further plea in this behalf, the said defendant says
27 actio non, because it says that the said coupons in the said declaration mentioned were made and issued under the circumstances and for the consideration following, that is to say: Heretofore, to wit, on the 15th day of January, 1872, one M. R. Adams, the acting supervisor of the said town of Coloma, professing to act under and by virtue of the certain act of the legislature of the State of Illinois entitled "An act to incorporate the Chicago & Rock River Railroad Company," approved March 24th, 1869, made a subscription, in the name of and behalf of the said town of Coloma, to the capital stock of the said Chicago & Rock River Railroad Company in the sum of $50,000; and in consideration thereof, and in payment of such subscription, made, executed, and delivered to the said railroad company, in the name of the said town, among others, the said several bonds in the said declaration mentioned, and which said bonds were also attested by J. D. Davis, acting clerk of said town.

And at the same time the said M. R. Adams executed and delivered

to the said railroad company certain interest-coupons attached to each of said bonds, the first of said interest-coupons so attached to each of said bonds, by its terms due and payable on the first day of July, 1872, and being for interest upon the said bonds, respectively, from the 15th day of January, 1872, until the 1st day of July, of the same year; and the second of said coupons so attached to each of the said bonds
28 being for the interest on said bonds, respectively, from the first day
of July, 1872, until the first day of July, 1873, and by their terms made payable on the said last-named date; and which are the same interest-coupons in the said declaration mentioned, and the same were made and delivered for the consideration aforesaid, and not other or different.

And the said defendant avers that, under and by virtue of the provisions of the said act, the said supervisor was only authorized to make and deliver, and the said clerk was only authorized to attest, bonds to be delivered in the name of the said town in payment of said subscription bearing interest on their face at the rate of ten per cent. per annum, interest payable annually at the expiration of each and every year after the date of the said bonds, respectively, until their maturity; and forasmuch as no authority is given in the said act to the said supervisor or clerk to make or attest in the name of the said town the said interest-coupons, and inasmuch as the same are not made or delivered for the interest annually becoming due upon the said bonds, respectively, after the date thereof the said coupons are, and each of them is, made, delivered, and attested by the said supervisor and clerk without any authority of law, and the same are void and of no effect as against this defendant, without this, that the said coupons in the said declaration mentioned, or either of them, is the act or deed of this defendant; and this the said defendant is ready to verify. Wherefore it prays
29 judgment, &c.

F. SACKETT,
Atty. for Deft.

(Endorsed:) Filed Nov. 2d, 1874. Wm. H. Bradley, clk.

Affidavit in support of pleas.

In the United States circuit court for the northern district of Illinois, of the October term, 1874.

DAVID W. EAVES
vs.
THE TOWN OF COLOMA.

F. Sackett, being duly sworn, deposes and says: That he is the agent and attorney for the defendant in the above-entitled suit; and he further says, on his information and belief, that the several pleas filed in said cause by the said defendant are each true in substance and in fact.

FREDERICK SACKETT.

Sworn and subscribed before me this 2d day of November, 1874.

[SEAL.] THOMAS S. McCLELLAND,
Notary Public.

(Endorsed:) Filed Nov. 2d, 1874. Wm. H. Bradley, clk.

30 And afterwards, to wit, on the 3d day of November, A. D. 1874, said plaintiff, by his attorneys, filed in said clerk's office his demurrer to the pleas of said defendant; which said demurrer is in the words and figures following, to wit:

Demurrer to pleas.

In the circuit court of the United States for the northern district of Illinois, October term, 1874.

DAVID W. EAVES }
vs. } Demurrer.
THE TOWN OF COLOMA. }

And the said plaintiff, as to the several pleas of the defendant above pleaded, saith that each and all of the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are insufficient in law to bar or preclude him, the said plaintiff, from having or maintaining his said action against the said defendant, and that he, the said plaintiff, is not bound in law to answer the same; and this he, the said plaintiff, is ready to verify.

And the said plaintiff, according to the form of the statute in such cases made and provided, states and shows to the court the following cause of demurrer to the first plea above pleaded; that is to say, although the said plaintiff in his declaration hath demanded of and from the said defendant a sum certain due to him from the said defendant by virtue of its writing-obligatory under seal, yet the said defendant hath not in or by his said first plea denied the said writings-
31 obligatory to be his deed nor in any manner shown himself to be
discharged therefrom.

And the said plaintiff further shows to the court the following causes of demurrer to the said second plea:

1st. That the said defendant has not denied the execution of said writings-obligatory under oath; and

2nd. That the said plea above pleaded raises no issue whatever to be tried by a jury.

And the said plaintiff also shows to the court the following causes of demurrer to the third plea above pleaded:

1st. That the said writings-obligatory in the said declaration mentioned recite that they are issued in accordance with a vote of the electors of said township of Coloma, at a regular election held July 28, 1869, and the said defendant, the township of Coloma, is now estopped from denying—

1st. That the question of subscribing fifty thousand dollars of stock to the Chicago & Rock River Railway Company was lawfully submitted to the legal voters of said township of Coloma; and

2nd. From denying that the legal voters of said township, or any of them, ever voted upon that question.

2nd. And also for that the consideration therein mentioned for the execution and delivery of its said writings-obligatory was sufficient in law.

3rd. And that the said defendant cannot deny a consideration for the execution and delivery of its said writings-obligatory.

32 And the said plaintiff further shows to the court the following causes of demurrer to the fifth plea above pleaded:

1st. That the said defendant by said plea establishes the right of the said town of Coloma to issue said writings-obligatory; and

2nd. That the same constitutes no defence to this action, and the facts therein set forth are no bar to plaintiff's recovery.

And the said plaintiff further shows to the court the following causes of demurrer to the sixth plea above pleaded:

1st. That the consideration therein mentioned for the execution and delivery of the said coupons in the declaration set forth is good and sufficient in law.

2nd. That the law presumes, and the defendant cannot deny, a consideration for the execution and delivery of the same.

3rd. And also for that none of said coupons were payable in a less time than one year from the date of the issue of said writings-obligatory to which they were attached.

4. And for that the interest on said writings-obligatory by their terms was made payable annually.

5. And, further, for that the payment of the first coupon on each bond at a later time than one year from the date of the issue of said writings-obligatory was a benefit to said town of Coloma, and that the provision of the statute as to the time for the payment of interest on the writings-obligatory issued under it was directory and not mandatory.

33 Wherefore, by reason of the insufficiency of the said several pleas in this behalf, the said plaintiff prays judgment and his debt aforesaid, together with his damages by him sustained on occasion of the detention thereof, to be adjudged to him, &c.

GRANT & SMITH & L. M. FISHER,
Attys. for Plff.

(Endorsed:) Filed Nov. 3d, 1874. Wm. H. Bradley, clk.

And afterwards, to wit, on the 10th day of November, A. D. 1874, said plaintiff, by his attorneys, filed in said clerk's office his exceptions to the affidavit in support of said pleas, which said exceptions are in the words and figures following, to wit:

Exceptions to affidavit in support of pleas.

In the circuit court of the U. S. for the northern district of Illinois.

DAVID W. EAVES
vs.
THE TOWN OF COLOMA.

Now comes the above plaintiff, and states to the court that Frederick Sacket, the attorney for the said defendant, has, since the filing of the demurrer to one of the pleas of the defendant on the ground thatsaid plea was insufficient because not made under oath, made affidavit, on information and belief, that all the pleas filed by said defendant in said cause were true.

34 That said affidavit was made without leave of court, and without notice to or consent of the opposing counsel; and this defendant excepts to said affidavit as insufficient.

1st. Because said affidavit, on information and belief, amounts simply to an affidavit of a belief of a belief.

2nd. That said Frederick Sacket does not allege on any knowledge of the facts sworn to.

3rd. That said affidavit should have been made by the supervisor of the town, and should allege a knowledge of the facts sworn to.

4th. That said affidavit might, in its present form, have been made by any person having no knowledge whatever of the facts.

5. That said affidavit could not subject the person making to the tests required by law.

DAVID W. EAVES,
By GRANT & SMITH, &
L. M. FISHER,
Attys. for Plff.

(Endorsed:) Filed Nov. 10, '74. Wm. H. Bradley, clk.

And on the same day, to wit, the 10th day of November, A. D. 1874, in the adjourned October term of said court, in the record of the proceedings thereof in said-entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

DAVID W. EAVES
vs. } Debt.
THE TOWN OF COLOMA.

35 Now come the parties by their attorneys, and now comes on to be heard the demurrer of the plaintiff to the pleas of the defendant filed herein; and after hearing the arguments of counsel, the court takes the same under advisement.

And afterwards, to wit, on the 11th day of November, A. D. 1874, in the adjourned October term of said court, in the record of the proceedings thereof in said-entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

DAVID W. EAVES
vs. } Debt.
THE TOWN OF COLOMA.

36 The court having considered and being now fully advised upon the demurrer of the plaintiff to the pleas of the defendant herein filed, sustains said demurrer as to all the pleas except the first and second pleas. And on motion of the defendant, by its attorney, leave is given it to verify said first and second pleas.

And afterwards, to wit, on the 25th day of November, A. D. 1874, in the adjourned October term of said court, in the record of the proceedings thereof in said-entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

DAVID W. EAVES
vs. } Assumpsit.
THE TOWN OF COLOMA.

On motion of the plaintiff, by his attorney, upon affidavit filed, it is ordered that this cause be continued at the costs of the plaintiff.

37 Afterwards, to wit, on the 13th day of January, A. D. 1875, said plaintiff, by his attorneys, filed in said clerk's office his

amendment to his declaration in said-entitled cause; which said amendment is in the words and figures following, to wit:

Amendment to declaration.

In the circuit court of the United States for the northern district of Illinois.

David W. Eaves
vs.
The Town of Coloma.
} Amendment to delaration.

Now comes the plaintiff in said cause, and, by leave of court first had and obtained, amends his declaration therein, and for cause thereof states:

That on the first day of July, A. D. 1874, another instalment of interest on said writings-obligatory Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and the coupons therefor, fell due, being ten coupons of fifty (50) dollars each, amounting, in all, to the sum of five hundred (500) dollars.

That said writings-obligatory are the same declared upon in the first count of the original declaration herein.

That the plaintiff is the bearer of said coupons for interest, and that said defendant has failed to provide funds for the payment of said instalment of interest at said treasurer's office of the State of Illinois, in accordance with said act of April 16, 1869, and has also neglected
38 to pay the same, though the time of payment has long since elapsed.

And the plaintiff further avers that on the first day of July, A. D. 1874, another instalment of interest on said writings-obligatory Nos. 51, 52, 53, 54, 55, and the coupons therefor, fell due, being five coupons of one hundred (100) dollars each, making, in all, five hundred (500) dollars.

That said writings-obligatory are the same declared upon in the second count of the original declaration in said cause.

That the plaintiff is the bearer of said coupons for interest, and that said defendant has failed to provide funds for the payment of said instalment of interest at the said treasurer's office of the State of Illinois, in accordance with said act of April 16, 1869, and has also neglected to pay the same, though the of payment has long since elapsed.

Whereby the said town of Coloma has become liable to pay, and an action has accrued to the plaintiff to have and recover of the said defendant the said instalments of interest, amounting, in all, to the sum of one thousand ($1,000) dollars as debt, and the sum of five hundred (500) dollars as damages, in addition to the amount sued for in said original declaration.

And therefore he sues.

GRANT & SMITH and
L. M. FISHER,
Attys. for Plff.

(Endorsed:) Filed Jany. 13, 1875. Wm. H. Bradley, clk.

39 And afterwards, to wit, on the 24th day of March, A. D. 1875, in the adjourned March term of said court, in the record of the proceedings thereof in said-entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

DAVID W. EAVES
vs. } Debt.
THE TOWN OF COLOMA.

Now come the parties, by their attorneys, and upon issue joined there upon come a jury of good and lawful men, to wit, George H. Lanphere, C. F. Adams, Edward Manierre, David Whipple, S. W. Morse, Wesley Johnson, E. T. Green, J. C. Wright, William Johnson, William P. Hewett, George A. Waterman, and G. L. S. Sheff, who were all duly elected, tried, and sworn well and truly to try said issue, and, after hearing the evidence and the arguments of counsel and receiving the instructions of the court, the jury returned the following verdict, to wit:

We, the jury, find the issue for the plaintiff, and find his debt in the sum of four thousand and thirty-nine dollars and thirty-one cents, and assess his damages to the sum of three hundred and fifty-nine dollars and seventy-nine cents.

And thereupon the defendant, by its attorney, moves the court for a new trial herein.

And afterwards, to wit, on the 20th day of April, A. D. 1875, in the adjourned March term of said court, in the record of the proceedings thereof in said-entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

40 DAVID W. EAVES
vs. } Assumpsit.
THE TOWN OF COLOMA.

The court having considered, and being now fully advised, upon the motion of the defendant heretofore entered herein for a new trial of this cause, overrules the same. It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of four thousand and thirty-nine dollars and thirty-one cents, his debt, and the sum of three hundred and fifty-nine dollars and seventy-nine cents, his damages, making the sum of forty-three hundred and ninety-nine dollars and ten cents for both debt and damages, together with his costs and charges in this behalf expended, amounting to the sum of eighty dollars and thirty cents.

And afterwards, to wit, on the 24th day of April, A. D. 1875, said defendant filed its bond in appeal in said-entitled cause; which said bond is in the words and figures following, to wit:

Appeal-bond.

Circuit court of the United States for the northern district of Illinois.

DAVID W. EAVES
vs. }
THE TOWN OF COLOMA.

Know all men by these presents, that the town of Coloma, in the
41 State of Illinois, as principal, and Trueman Culver, Augustus P. Smith, John L. Newton, Andrew S. Goodell, James M. Armstrong, Oscar Hazen, of the county of Whiteside, in the State of Illinois, and district aforesaid, as sureties, are held and firmly bound unto David W. Eaves, of the State of Kansas, in the sum of six thousand

dollars, to be paid to the said David W. Eaves, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this twenty-fourth day of April, A. D. 1875.

Whereas the above-named town of Coloma has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such, that if the above-named town of Coloma shall prosecute its said writ of error to effect, and all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

TOWN OF COLOMA. [SEAL.]
By H. F. BATCHELLER, *Supervisor.* [SEAL.]
HENRY P. PRICE, *Clerk.* [SEAL.]
42 T. CULVER. [SEAL.]
A. P. SMITH. [SEAL.]
J. L. NEWTON. [SEAL.]
A. S. GOODELL. [SEAL.]
J. M. ARMSTRONG. [SEAL.]
O. C. R. HAZEN. [SEAL.]

Approved.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed April 24, 1875. Wm. H. Bradley, clk.

43 And on the hearing of said cause the following exceptions were taken and allowed by the court and made of record in said cause, and are in the words and figures following, to wit:

Bill of exceptions.

In the circuit court of the United States for the northern district of Illinois.

DAVID W. EAVES
vs. } Assumpsit. Bill of exceptions.
THE TOWN OF COLOMA.

Be it remembered that on the trial of this cause upon the issue joined before a jury, the plaintiff, to prove the issues on his part, produced and offered in evidence certain bonds purporting to have been issued by the said town of Coloma, and of the general purport and effect of those mentioned in the declaration in this case, and, except as to the numbers and amounts, they were severally in the words and figures following, to wit:

$1,000.] UNITED STATES OF AMERICA.

COUNTY OF WHITESIDE,
State of Illinois, Town of Coloma.

Know all men by these presents, that the township of Coloma, in the county of Whiteside and State of Illinois, acknowledges itself to owe and be indebted to the Chicago & Rock River Railroad Company, or bearer, in the sum of one thousand dollars lawful money of the United States, which sum the said town of Coloma promises to pay to the said Chicago & Rock River Railroad Company, or the bearer hereof, 44 on the first day of July, in the year of our Lord one thousand eight hundred and eighty-one, at the office of the treasurer of the county of Whiteside aforesaid, in the State of Illinois, on the presentation of this bond, with interest thereon from the first day of January, A. D. 1872, at the rate of ten per cent. per annum, payable annually at the office of the treasurer of the county of Whiteside aforesaid, on the presentation and surrender of the annexed coupons.

[U. S. 5-ct. revenue-stamp.]

This bond is issued under and by virtue of the law of the State of Illinois entitled "An act to incorporate the Chicago & Rock River Railroad Company," approved March 24th, 1869, and in accordance with a vote of the electors of said township of Coloma at a regular election held July 28th, 1869, in accordance with said law; and under a law of the State of Illinois entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869. And when this bond is registered in the State auditor's office of the State of Illinois, the interest and principal will be paid by the State treasurer as provided by the said last-mentioned law.

In witness whereof the supervisor and town-clerk of said town have hereunto set their hands and seals this first day of January, A. D. 1872.

M. R. ADAMS, *Supervisor*. [SEAL.]
J. D. DAVIS, *Town-Clerk*. [SEAL.]

45 The plaintiff also produced and offered in evidence certain coupons or interest-warrants of the general character of those mentioned and described in the declaration in this case, amounting, in the aggregate, principal and interest, to the sum of $4,399.10, and, except as to date, amount, time of payment, and number, in the words and figures following:

"*Interest-warrant No.* 61.

"TOWN OF COLOMA.

"The town of Coloma, State of Illinois, will pay to the bearer, on the 1st day of July, A. D. 1873, one hundred dollars at the office of the treasurer of Whiteside County, being one year's interest on the bond numbered as above.

"M. R. ADAMS, *Supervisor*.
"J. D. DAVIS, *Town-Clerk*."

And the plaintiff, having given evidence tending to show that the signatures of M. R. Adams, supervisor, and J. D. Davis, town-clerk, signed to the said bonds and coupons, were the genuine signatures of those persons respectively, and that at the time said bonds and coupons purport to have been executed and issued, the said Adams was the acting supervisor and the said Davis was the acting town-clerk of the said town of Coloma, and further, that the said bonds, as appeared by the endorsements thereon of the certificate of C. E. Lippincott, auditor of the State of Illinois, were severally registered in the office of the

said auditor on the 2d day of January, 1872, pursuant to the
46 provisions of an act entitled "An act to fund and provide for
paying the railroad debts of counties, townships, cities, and
towns," in force April 16th, 1869, thereupon offered in evidence to the
jury aforesaid the said several bonds and coupons, together with the
endorsements upon the said bonds aforesaid.

But to the reading of the same in evidence the said defendant, by its said counsel, did then and there object, because it did not appear from the evidence that the said Adams and Davis, as such supervisor and clerk, were authorized or empowered by law to execute or deliver the said bonds or coupons for and on behalf of said town.

But the said court overruled the said objection and allowed the said bonds, coupons, and endorsements to be read in evidence to the jury; to which opinion and decision of the said court the said counsel for the defendant did then and there object.

And the plaintiff also, to sustain the issues on his part, offered in evidence a law of the State of Illinois entitled "An act to incorporate the Chicago & Rock River Railroad Company, approved March 24th, 1869," and particularly sections ten and eleven of said act, which were as follows, to wit:

"SEC. 10. To aid in the construction of said road by said company,
any incorporated city, town, or any township organized under the town-
ship-organization law of this State, along or near the route of said road,
may subscribe to the capital stock of said company.

47 "SEC. 11. No such subscription shall be made until the question
has been submitted to the legal voters of such city, town, or township
in which the subscription is proposed to be made; and the clerk of said city, town, or township is hereby required, upon presentation of a petition signed by at least ten citizens, who are legal voters and tax-payers in said city, town, or township, stating the amount proposed to be subscribed, post up notices in three public places in such city, town, or township, which notices shall be posted not less than thirty days before the day of holding such election, notifying the legal voters of such town or township to meet at the usual place of holding elections in such town or township, for the purpose of voting for or against such subscription.

"If it shall appear that a majority of all the legal voters of such city,
town, or township, voting at such election, have voted for subscription,
it shall be the duty of the president of the board of trustees, or other
executive officer of such town, and of the supervisor in townships, to
subscribe to the capital stock of said railroad company, in the name of
such city, town, or township, the amount so voted to be subscribed,
and to receive from said company the proper certificates therefor. He
shall also execute to said company, in the name of such city, town, or
township, bonds bearing interest at ten per cent. per annum, which
bonds shall run for a term of not more than twenty years, and the in-
terest on the same shall be made payable annually, and which said
48 bonds shall be signed by such president, or supervisor, or other
executive officer, and be attested by the clerk of the city, town,
or township in whose names the bonds are issued; and it shall be his
duty to make up a record of the issue of the said bonds, which shall be
delivered to the president or the secretary of said company for the use of
said company."

And the plaintiff further introduced in evidence testimony tending to prove that bonds purporting to be those of the town of Coloma, of which those introduced in evidence were a part, and to some of which the said coupons offered in evidence had been attached, amounting in the aggregate to the sum of $50,000, had been delivered by the said M. R. Adams, acting supervisor of the said town of Coloma, on the 30th day of December, 1872, to the Chicago & Rock River Railroad Company, and that the said M. R. Adams, acting supervisor of the said town, received in return therefor certificates for 500 shares of $100 each of the capital stock of the said railroad company, and that the said town of Coloma still retains said certificates of stock and has never parted with any of its rights to the same.

And thereupon the counsel for the plaintiff rested his case.

The said counsel for the defendant, to maintain and prove the said issues on the part of said defendants, introduced in evidence testimony
tending to prove that at the time the said Adams and Davis signed
49 and issued the said bonds and coupons they were at and within
the town of Amboy, in Lee County, Illinois, about twenty miles from the said town of Coloma, and at the place where the principal office of the said railroad company was located, and where the president of the company resided; that before going to the said town of Amboy the said Adams and Davis had heard and understood that an application was to be made by some of the citizens and tax-payers of the said town of Coloma for an injunction to enjoin the issuing of the said bonds; that they went to the said town of Amboy under an arrangement with some of the officers of the said railroad company, to prevent the service of the said writ of injunction upon them.

And further to prove the said issues on the part of the defendant, the said counsel for the defendant introduced in evidence testimony tending to prove that the only petition ever presented to the town clerk of the said town of Coloma asking said clerk to call or give notice of an election by the legal voters of the said town for the purpose of voting for or against a subscription to the capital stock of the Chicago & Rock River Railroad Company was to the purpose and effect following:

"To A. S. Goodell, town clerk of Coloma Township, in the county of Whiteside and State of Illinois:

"The undersigned, legal voters and tax-payers in said town, do hereby petition you that a special meeting of the legal voters of said town be
called, to be holden at the usual place of voting in said town, at
50 which the question of said town making a subscription to the
capital stock of the Chicago & Rock River Railroad shall be submitted to them, and that such call shall be made in the within words and figures.

"June 25th, 1869."

[Signed by fifteen voters and tax-payers of said town.]

Special town meeting.

STATE OF ILLINOIS,
County of Whiteside, ss:

Whereas, by section 10 of an act to incorporate the Chicago & Rock River Railroad Company, in force March 24th, 1869, any county, incorporated city, or town, or any township organized under the township-organization law of this State along or near the route of said railroad is authorized to subscribe to the capital stock of said company; and whereas said railroad company has constructed that portion of their road extending from Rock Falls to Amboy the first division of said

road, and created a separate and distinct stock for the construction of said first division; and whereas a petition has been presented to me signed by ten citizens who are legal voters and tax-payers in the township of Coloma, asking that a special election shall be called in said town at which the question of said town subscribing to the capital stock of said company to the amount of fifty thousand dollars shall be submitted to the legal voters of said town, the bonds to be issued
51 in payment of said stock to be in such form as to entitle the same to registration under the act of the legislature in that behalf in force April 16th, 1869:

Now, therefore, the legal voters of said town are hereby notified to meet at the store of T. Culver, in Rock Falls, on the 28th day of July, 1869, for the purpose of voting for or against said town subscribing the sum fifty thousand dollars to the capital stock of the first division of the Chicago & Rock River Railroad Company. At said election the form of voting on said question shall be "for subscription" or "against subscription."

Given in my hand at my office this 28th day of June, A. D. 1869.

A. S. GOODALL,
Town Clerk.

And also that the only notice or call for any meeting or election of the legal voters of said town for the purpose of voting for or against any subscription to the capital stock of said railroad company ever given or made by the clerk of said town was by posting up notices, which were in the words and figures of the form of notice prescribed and set forth in said petition; that such notices were printed and prepared by the officers of said railroad company, and the petition and notice were filed in the office of the town clerk of said town on the 29th day of July, 1869.

And further to prove the said issues on the part of the defendant, the said defendant's counsel introduced and read in evidence to
52 the jury the following record from the record-books in the office of the said town clerk:

At a special town-meeting held in the town of Coloma, county of Whiteside, and State of Illinois, at the store of T. Culver, in Rock Falls, on the 28th day of July, A. D. 1869, the meeting was called to order by A. S. Goodell, town clerk; Richard Arey was, on motion of T. Culver, duly chosen to preside as moderator, who, being first duly sworn by J. D. Arey, a justice of the peace in said town, entered upon the duties of his office.

The polls for voting for or against subscribing the sum of fifty thousand dollars to the capital stock of the first division of the Chicago & Rock River Railroad were then opened, proclamation thereof being first made by the town clerk.

At twelve o'clock at noon, on motion of J. C. Arey, the meeting adjourned and polls closed for one hour, till one o'clock p. m.

At one o'clock p. m., meeting called to order by the moderator, and polls opened pursuant to adjournment. The meeting closed at six o'clock p. m., and the presiding officers proceeded to canvass the votes.

The following is a statement of the result of the canvass of votes by ballot for or against subscribing the sum of fifty thousand dollars to the capital stock of the first division of the Chicago & Rock River Railroad at a special town-meeting held in the store of T. Culver in Rock Falls, in the town of Coloma, county of Whiteside, and State of Illinois, 53 on the 28th day of July, A. D. 1869, as publicly canvassed by the presiding officers of said meeting.

There were four votes cast against subscription.

There were one hundred and twenty-three votes for subscription.

RICHARD AREY, *Moderator.*
A. S. GOODELL, *Town Clerk.*

And further to prove the issues on the part of the defendant the counsel for the defendant introduced in evidence a transcript or statement of said vote filed by the clerk of said town in the office of the county clerk of said county of Whiteside as follows:

The following is a statement of the result of the canvass of votes for or against subscribing the sum of fifty thousand dollars to the capital stock of the first division of the Chicago & Rock River Railroad at a special town-meeting held in the store of T. Culver, in Rock Falls, in the town of Coloma, county of Whiteside, and State of Illinois, on the 28th day of July, 1869, as publicly canvassed by the presiding officers at said meeting:

There were one hundred and twenty-three votes cast for subscription. There were four votes cast against subscription.

WHITESIDE COUNTY,
Town of Coloma:

I, A. S. Goodell, town clerk of said town of Coloma, do hereby certify that the foregoing is a true and correct copy thereof on file in my office.

54 In witness whereof I have hereunto set my hand and seal this 2nd day of August, 1869.

A. S. GOODELL,
Town Clerk.

And further to prove the issues on its part the defendant offered in evidence testimony tending to prove that no dividends have ever been paid upon the certificates of stock in said company received by said Adams in behalf of said town as above stated, and that the stock in said company is of no value. To the giving of which said evidence the counsel for the plaintiffs then and there objected, and the court sustained said objection and excluded the said testimony; to which said ruling of said court excluding said testimony the said defendant by its said counsel then and there excepted.

And thereupon the said defendant rested the said cause on its part.

And the counsel for the said plaintiff, further to maintain and prove the said issues on the part of the said plaintiff, offered and read in evidence the depositions of J. H. Fairbank and W. N. Coler, which evidence tended to prove that the said plaintiff was the bona-fide owner and holder of the said coupons, receiving the same before due and for a valuable consideration paid therefor.

Plaintiff also offered and read in evidence, from the records in the office of the town clerk of said town, the following:

55 At a special town-meeting held in the town of Coloma, on the 3d day of January, 1871, for the purpose of voting for or against allowing seven thousand five hundred dollars ($7,500) of the subscription voted by said town to the capital stock of the C. & R. R. R. R. Co. to be used in grading said road from the east side of Lee Center Township into the village of Rock Falls—

On motion, E. G. W. Parks was elected chairman of said meeting.

On motion, Richard Arey was elected moderator of said meeting.

On motion, J. E. Woodsford was elected clerk.

The moderator and clerk being duly sworn in by Jno. D. Arey, a justice of the peace for said town, entered upon the duties of their offices, and the polls for voting were opened.

On motion of J. A. Patterson, the following resolutions were unanimously adopted:

Whereas, at a special town-meeting held in the town of Coloma, in the county of Whiteside and State of Illnois, said town voted to subscribe fifty thousand dollars to the capital stock of the Chicago & Rock River Railroad Company; and whereas a special town meeting was called in said town of Coloma on the 3d day of January, 1871, to vote for or against the issuing to said company the sum of $7,500 of said subscription: Now, therefore, be it

Resolved, That the supervisor of the town of Coloma is hereby
56 ordered to issue no part of the $50,000 subscribed to the capital
stock of the said company until said railroad is built from Amboy
to Rock Falls, and the cars shall have been run thereon.

And be it further resolved, That we are unanimously in favor of issuing the full amount of the said fifty thousand dollars subscription immediately upon the arrival of the first train of cars on the Chicago & Rock River Railroad from Amboy to Rock Falls.

And be it further resolved, That the town clerk is hereby required to record the above preamble and these three resolutions on the records of said town of Coloma.

No votes were polled for issuing said bonds.

88 votes were polled against issuing said bonds.

J. E. WOODFORD,
Clerk of Meeting.
RICHARD AREY,
Moderator.

And the plaintiff also introduced in evidence testimony tending to show that at the time of the delivery of said bonds by M. R. Adams, acting supervisor of the town of Coloma, to the Chicago & Rock River Railroad Company, the said company's railroad had been completed from the said town of Amboy Minors into the said town of Coloma, and that the same was completed and in operation through said town within a few weeks after said bonds were delivered.

57 Which was all the testimony in said cause.

And thereupon the said counsel for the said plaintiff moved the court to instruct the jury to return a verdict in favor of the said plaintiff for the sum of $4,399.16, the aggregate amount due upon the said coupons for principal and interest; to the giving of which instructions the counsel for said defendants then and there objected on the ground that the evidence failed to show that the said Adams, as supervisor, and the said Davis, as town clerk of the said town of Coloma, had power or authority to execute and deliver the said bonds or coupons; that such want of power on the part of the said Adams and Davis appeared as a matter of public record in the office of the town clerk of said town, and also in the office of the county clerk of the said county of Whiteside, at the time the said bonds and coupons were issued, and at the time that the said plaintiff purchased and received the said coupons, and that the plaintiff was conclusively presumed to have had notice of such want of power.

And thereupon the said circuit judge overruled the said objections, and instructed the said jury to find a verdict for the said plaintiff for the amount due upon the said coupons, stating, at the same time, that he would receive the said verdict of the said jury, and enter a motion for a new trial on behalf of said defendant upon the grounds of objection above stated.

58 And thereupon said jury found a verdict for the plaintiff for the sum of $4,399.10, being for the amount of said coupons and interest of six per cent. after due. And the said judge thereupon entered a motion for a new trial for and on behalf of said defendant. And afterwards, to wit, on the 20th day of April, 1875, the said motion for a new trial coming on to be heard, the said circuit judge, after argument of counsel for the respective parties, overruled the said motion and rendered judgment on said verdict, to which decision of the said circuit judge overruling said motion and rendering said judgment, the said counsel for the defendant did then and there except.

And because none of the said exceptions so offered and made to the opinion and decision of the said circuit judge, do appear upon the record of the said trial; therefore, on the prayer of the said defendant by its said counsel, the said circuit judge hath to this bill of exceptions put his seal according to the statute in such case made and provided.

H. W. BLODGETT, *Judge.* [SEAL.]

(Endorsed:) Filed April 30, 1875. Wm. H. Bradley, clk.

59 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein David W. Eaves is the plaintiff, and the town of Coloma is the defendant, as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in Chicago, in said district, this 7th day of October, A. D. 1875, and of our Independence the 100th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

60 The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in said court before you between David W. Eaves, plaintiff, and the town of Coloma, defendant, a manifest error hath happened to the great damage of the said town of Coloma, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this twentieth day of April, A. D. 1875,

[SEAL.] WM. H. BRADLEY,
Clerk of the Circuit Court of the United States
for the Northern District of Illinois.

61 In the Supreme Court of the United States of the October term, 1875.

THE TOWN OF COLOMA, APPELLANT, *vs.* DAVID W. EAVES, APPELLEE. } Appeal from the United States circuit court for the northern district of Illinois.

And now comes the said Town of Coloma, by F. Sackett, its attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

First. The verdict of the jury was manifestly against the evidence in the case.

Second. The verdict of the jury was manifestly against the law of the case.

Third. The verdict of the jury should have been in favor of the defendant.

Fourth. The court erred in instructing the jury to find a verdict in favor of the plaintiff below.

Fifth. The court erred in overruling the motion for a new trial.

By reason whereof the appellant prays that said judgment may be reversed, &c.

By F. SACKETT,
Attorney for Appellant.

(Indorsed:) David W. Eaves vs. The Town of Coloma. Writ of error.

62 THE UNITED STATES OF AMERICA, *ss:*

To David W. Eaves, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein the Town of Coloma is plaintiff in error and you, the said David W. Eaves, are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned as rendered against the said plaintiff in error should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Henry W. Blodgett, judge of the district court of the United States, and acting as judge of the circuit court of the
United States for the northern district of Illinois, this twenty-
63 fourth day of April, in the year of our Lord one thousand eight
hundred and seventy-five.

H. W. BLODGETT, *Judge.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

We hereby acknowledge due service upon us of the within and foregoing citation, by having the same exhibited to us and a copy thereof left with us this 26th day of April, A. D. 1875.

GRANT & SMITH & L. M. FISHER,
Attys. for said Deft. in error.

(Indorsed:) Supreme Court of the United States. David W. Eaves vs. The Town of Coloma. Citation on writ of error.

(Indorsement on cover:) No. 825. The Town of Coloma, plaintiff in error, vs. David W. Eaves. N. Illinois C. C. U. S. Filed 5th November, 1875.

IN THE

SUPREME COURT

OF THE UNITED STATES,

OCTOBER TERM, A. D. 1875.

No. 825.

THE TOWN OF COLOMA, Plaintiff in Error,

—vs.—

DAVID W. EAVES, Defendant in Error.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

Statement of Case and Brief for Plaintiff in Error.

C. M. OSBORN, Att'y for Plaintiff in Error.

CHICAGO:
BEACH, BARNARD & CO., LEGAL PRINTERS, 98 RANDOLPH STREET.
1876.

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1876.

STATEMENT OF CASE.

This suit was brought by the defendant in error, David W. Eaves, against the town of Coloma, to recover the amount alleged to be due upon a number of coupons or interest warrants, attached to certain bonds, purporting to have been issued by the town of Coloma, through its proper officers, to the Chicago and Rock River Railroad Company, in payment of a subscription by the town to the capital stock of the railroad company, to the amount of $50,000.

The recovery is resisted by the town, mainly upon the ground of a want of power, in the officers of the town, to issue the bonds, for the reason that the legal voters of said town have never been notified to vote upon the question of the town subscribing to the capital stock of said railroad company, and that they have never done so. The statute authorizing the subscription declaring that "no subscription shall be made until the question has "been submitted to the legal voters of the township in "which the subscription is proposed to be made," after the prescribed notice, notifying the legal voters of the time and place of an election, "for the purpose of voting "for or against such subscription." And also that such want of power was a matter of public record, of which all persons dealing in said bonds are conclusively presumed to have had notice.

The Chicago and Rock River Railroad Company was organized under a special charter granted by the Legislature of the State of Illinois, in force March 24, 1869.

The corporation was authorized to build and operate a railroad from Rock Falls, on Rock River, to Chicago, a distance of about one hundred and thirty miles.

By section ten of said act it was provided, "to aid in the "construction of said road any incorporated city, town or "township organized under the township organization "laws of the State, along or near the route of said road, "may subscribe to the capital stock of said company." (Record,p. 21.)

Section eleven provides:

"No such subscription shall be made until the question has been submitted to the legal voters of said city, town or township in which the subscription is proposed to be made. And the clerk of such city, town or township is hereby required, upon presentation of a petition signed by at least ten citizens, who are legal voters and tax-payers in such city, town or township, stating the amount proposed to be subscribed, to post up notices in three public places in each town or township; which notices shall be posted not less than thirty days prior to holding such election, notifying the legal voters of such town or township to meet at the usual places of holding elections in such town or township, for the purpose of voting for or against such subscriptions. If it shall appear that a majority of all the legal voters of such city, town or township voting at such election have voted 'for subscription,' it shall be the duty of the president of the board of trustees, or other executive officer of such town, and of the supervisor in townships, to subscribe to the capital stock of said railroad company, in the name of such city, town or township, the amount so voted to be subscribed, and to receive from such company the proper certificates therefor. He shall also execute to said company, in the name of such city, town or township, bonds bearing interest at ten per cent. per annum; which bonds shall run for a term of not more than twenty years; and the interest on the same shall be made payable annually; and which said bonds shall be signed by such president or supervisor, or other executive officer, and be attested by the clerk of the city, town or township in whose name the bonds are issued." (Record, p. 21.)

Section twelve provides:

"It shall be the duty of the clerk of any such city, town or township, in which a vote shall be given in favor of subscriptions, within ten days thereafter, to transmit to the county clerk of their counties a transcript or statement of the vote given, and the amount so voted to be subscribed, and the rate of interest to be paid." (Private Laws Ill., 1869, Vol. 2, p. 965.)

On the trial, the following facts appeared in evidence :

First. On or about June 28, 1869, fifteen voters and taxpayers, of the said town of Coloma, presented to the town clerk of said town a petition, in the words and figures, and to the purport and effect, following :

" To A. S. Goodell, Town Clerk of Coloma Township, in the County of Whiteside, and State of Illinois :

" The undersigned, legal voters and tax payers, do hereby petition you that a special meeting of the legal voters of said town be called, to be holden at the usual place of voting in said town, at which the question of said town making a subscription to the capital stock of the Chicago and Rock River Railroad, shall be submitted to them, and that such call shall be made in the within words and figures, to wit :

" STATE OF ILLINOIS, }
COUNTY OF WHITESIDE. } ss.

" Whereas, by section 10 of an act to incorporate the Chicago and Rock River Railroad Company, in force March 24th, 1869, any county, incorporated city, or town, or any township, organized under the township organization law of this State, along or near the route of said railroad, is authorized to subscribe to the capital stock of said company; and whereas, said railroad company has constituted that portion of their road extending from Rock Falls to Amboy, the First Division of said road, and created a separate and distinct stock for construction of said First Division; and whereas, a petition has been presented to me, signed by ten citizens, who are legal voters and tax payers in the township of Coloma, asking that a special election shall be called in said town, at which the question of said town subscribing to the capital stock of said company, to the amount of $50,000, shall be submitted to the legal voters of said town; the bonds to be issued in payment of said stock, to be in such form as to entitle the same to registration under the act of the legislature in that behalf, in force April 16th, 1869.

"Now, therefore, the legal voters of said town are hereby notified to meet at the store of T. Culver, in Rock Falls, on the 28th day of July, 1869, for the purpose of voting for or against said town subscribing the sum of $50,000 to the capital stock of the First Division of the Chicago and Rock River Railroad Company. At said election the form of voting on said question shall be, 'For subscription,' or 'Against subscription.'

"Given under my hand, at my office, this 28th day of June, A. D. 1869.

(Record p. 22.) A. S. GOODELL, *Town Clerk.*

Second. The only notice or call for any meeting or election of the legal voters of said town, for the purpose of voting for or against any subscription to the capital stock of said railroad company, ever given or made by the clerk of said town, was by posting up notices in the words and figures of the form of notice prescribed and set forth in said petition. Such notices were prepared and printed by the officers of said company, and the petition and notice of election were filed in the office of the town clerk of said town, on the 29th day of July, 1869. (Record p. 23.)

Third. At the time and place appointed in the notice, an election was held, resulting in a large majority "for subscription."

Fourth. The records in the town clerk's office, under date of July 29th, 1869, showed the following: "At a special town meeting held in the town of Coloma, County of Whiteside, and State of Illinois, at the store of T. Culver, in Rock Falls, on the 28th day of July, A. D. 1869, the meeting was called to order by A. S. Goodell, town clerk. Richard Arey was, on motion of T. Culver, chosen to preside as moderator, who, being first duly sworn, entered upon the duties of his office. The polls for voting for or against subscribing the sum of fifty thousand dollars to the capital stock of the *First Division* of the Chicago and Rock River Railroad were then opened, proclamation thereof being first made by the town clerk.

"The following is a statement of the result of the canvass of votes, by ballot, for or against subscribing the sum of fifty thousand dollars to the capital stock of the *First*

Division of the Chicago and Rock River Railroad, at a special town meeting, held in the store of T. Culver, in Rock Falls, in the town of Coloma, County of Whiteside, and State of Illinois, on the 28th day of July, 1869, as publicly canvassed by the presiding officers of said meeting.

" There were four votes cast against subscription.

" There were one hundred and twenty-three votes for subscription. " RICHARD AREY, *Moderator*.

(Record, p. 23.) " A. S. GOODELL, *Town Clerk*."

Fifth. Pursuant to the 12th section of the charter of the railroad company, on the 2d day of August, 1869, the clerk of said town filed a transcript or statement in the office of the county clerk of his county, as follows:

" The following is a statement of the canvass of votes by ballot, for or against subscribing the sum of fifty thousand dollars to the capital stock of the First Division of the Chicago and Rock River Railroad, at a special town meeting, held in the store of T. Culver, in Rock Falls, in the town of Coloma, County of Whiteside, and State of Illinois, on the 28th day of July, 1869, as publicly canvassed by the presiding officers at said meeting.

" There were one hundred and twenty-three votes cast 'for subscription.'

" There were four votes cast against subscription.

" I, A. S. Goodell, town clerk of said town of Coloma, do hereby certify that the foregoing is a true and correct copy thereof, on file in my office.

" In witness whereof, I have hereunto set my hand and seal this 2d day of August, 1869.

(Record, p. 24.) " A. S. GOODELL, *Town Clerk*."

Sixth. Subsequently, the supervisor and town clerk of the town of Coloma, issued and delivered to the railroad company, in the name of the town, bonds to the amount of fifty thousand dollars, with interest coupons attached.

The bonds and coupons were in the following form:

" COUNTY OF WHITESIDE,
STATE OF ILLINOIS,
TOWN OF COLOMA.

" *Know all Men by these Presents*, That the township of Coloma, in the county of Whiteside, and State of Illinois, acknowledges itself to owe and be indebted to the Chicago and Rock River Railroad Company, or bearer, in the sum of one thousand dollars, lawful money of the United States, which sum the said town of Coloma promises to pay to the said Chicago and Rock River Railroad Company, or the bearer hereof, on the first day of July, in the year of our Lord one thousand eight hundred and eighty-one, at the office of the treasurer of the County of Whiteside, aforesaid, in the State of Illinois, on the presentation of this bond, with interest thereon from the first day of January, 1872, at the rate of ten per cent. per annum, payable annually, at the office of the treasurer of the County of Whiteside, aforesaid, on the presentation and surrender of the annexed coupons.

"This bond is issued under and by virtue of the law of the State of Illinois, entitled, 'An act to incorporate the Chicago and Rock River Railroad Company,' approved March 24th, 1869, and in accordance with the vote of the electors of said township of Coloma, at a regular election, held July 28th, 1869, in accordance with said law, and under a law of the State of Illinois, entitled, 'An act to fund and provide for paying the railroad debts of counties, townships, cities and towns,' in force April 16th, 1869; and when this bond is registered in the State Auditor's office of the State of Illinois, the interest and principal will be paid by the State Treasurer, as provided by the last mentioned law.

"In witness whereof, the Supervisor and Town Clerk of said town have hereunto set their hands and seals, this 1st day of January, A. D. 1872.

M. R. ADAMS, *Supervisor.* [SEAL.]
(Record, p. 19.) J. D. DAVIS, *Town Clerk.* [SEAL.]"

"INTEREST WARRANT NO. 61--TOWN OF COLOMA.

"The town of Coloma, State of Illinois, will pay to the bearer, on the first day of July, 1873, one hundred dollars, at the office of the treasurer of Whiteside County, being one year's interest on the bond numbered as above.

M. R. ADAMS, *Supervisor.*
(Record, p. 20.) J. D. DAVIS, *Town Clerk.*

Seventh. That the said David W. Eaves was the legal holder for value of the said coupons or interest warrants, to the amount of $4,399.16, principal and interest, without any actual notice of the matters set up by way of defense.

Upon the trial of said cause, the foregoing state of facts having been proved, the Court instructed the jury to find a verdict in favor of the plaintiff, and thereupon, the jury found a verdict for the plaintiff for the said sum of $4,399.16. (Record, p. 26.)

The errors assigned are the following :

1st. The verdict of the jury was manifestly against the evidence and the law of the case.

2d. The Court erred in instructing the jury to find a verdict in favor of the plaintiff below.

3d. The Court erred in overruling defendant's motion for a new trial.

None of the material matters of fact attempted to be proved on the trial, by either party, are disputed; and these several assignments of error simply raise the question of the legal effect of the facts proved, and whether the plaintiff, upon the facts proved, was entitled to recover.

BRIEF AND ARGUMENT.

Cases involving the question : when are the bonds and coupons of a municipal corporation invalid in the hands of a *bona fide* purchaser have so often been before the courts, and the question has been presented in such a variety of forms, that it ought no longer to be a matter of controversy. But, unfortunately, the decisions are not in entire harmony upon the subject.

Much that has been said by the courts touching the matter has had no close relation to the case in which it was said, and very much of the conflict of the cases is rather apparent than real. Upon a studied investigation, it will be found that the cases generally agree in stating substantially the same rules ; and the apparent discrepancies will be found to have originated in the fact that the force of the argument is always directed either for or against the points actually decided by the courts.

Upon a review of all the authorities, including the decisions of courts, and the text writers who have treated of the subject, it will be found that they establish the following points :

1. Mere irregularities in the issuing of the bonds, or non-compliance with preliminary requirements, not going to the question of *power to contract*, afford no defence as against the innocent holder of the bonds or coupons.

2. A municipal corporation may successfully defend against this class of securities, in whosesoever hands they may be, if the officers or agents who assume to issue them had no *power* so to do.

3. Where the officers or agents of a corporation are authorized by the statute to issue the bonds, but only upon

conditions of the happening of which they are made the judges, or of which, from the nature of the case, they must be presumed to have a knowledge superior to that of the public generally, then a recital in the bonds of the happening of such condition is binding on the corporation in favor of a *bona fide* holder for value.

4. But where the officers have no power to issue the bonds at all until after the occurring of conditions precedent to the existence of the power, and the happening of which conditions is made a matter of public record, of which the public is presumed to take notice, then the recitals in the bonds of the happening of such conditions are not binding upon the corporation.

Cooley on Const. Limit., 215.
Dillon on Munic. Corp'ns, 416 to 426, inc.
Clark v. *City of DesMoines*, 19th Iowa, 199.
Gold v. *The Town of Sterling*, 23 N. Y., 439.
Veeder v. *The Town of Lima*, 19 Wis., 280.
McWhorter et al. v. *The People ex rel.*, 65th Ills., 290.
Marsh v. *Fulton County*, 10 Wallace, 676.
Mayor v. *Ray*, 19 Wallace, 468.

Upon a critical review of all the cases and principles of law bearing upon the subject, J. J. Dillon and Cooley, the latest text writers who have treated of the subject, agree in deducing from the authorities the following principles of law as applicable to this case :

" The unauthorized acts of such officers or agents are not binding upon the corporate body which they profess to represent. Ordinarily, their unauthorized representations that they have power to do an act is not binding upon the corporation, and, where the authority to act is conferred by statute, which, in effect, is the power of attorney of the officer, all persons must, at their peril, see that the act of the agent on which they rely is within the power under which the agent acts."

"Those who deal with a corporation must take notice of the restrictions in its charter, or in the general law, and see to it that the contracts on which they rely are entered into in the manner the law authorizes."

"And where a want of power exists, a purchaser of the securities is chargeable with notice of it if the defect is disclosed by the corporate records. The powers of the agents of municipal corporations are matters of record, and the corporation is not liable for an unauthorized act."

"Assuming that any such subscriptions or securities may be authorized, the first requisite to their validity would seem, then, to be a special legislative authority make or to issue them ; an authority which does not reside in the general words in which the powers of local self-government are usually conferred, and one also which must be carefully followed in all essential particulars, or the subscription or security will be void."

"And while mere irregularities of action, not going to the essentials of the power, would not prevent parties who had acted in reliance upon the securities enforcing them, yet, as the doings of these corporations are matters of public record, and they have no general power to issue negotiable securities, any one who becomes the holder of such securities, even though they be negotiable in form, will take them with constructive notice of any want of power in the corporation to issue them, and cannot enforce them when their issue was unauthorized."

Cooley on Const. Limit., 215.
Dillon on Munic. Corp'ns, Secs. 419 to 426, incl.

The principles thus announced are supported by all the cases—certainly by the more recent cases—both in the State Courts and in the Supreme Court of the United

States. It will only be necessary to refer to some of the leading cases.

The case of *Clark* v. *The City of Des Moines* was a suit brought to recover upon certain city warrants or orders purporting to have been issued by the Mayor and Recorder of the city. The plaintiff was the *bona fide* holder of the warrants for value by endorsement, without any notice of the matters pleaded as defences thereto.

The defendant, on the trial, offered to show, by the record of the proceedings of the city council, that all the warrants were issued without any authority from the city council, and without any vote of said council authorizing the same. But this evidence the court below refused to receive, because the warrants were negotiable in form, and had been negotiated to the holder.

After an exhaustive examination of all the leading cases which had been decided up to that time, the Supreme Court held: "that a municipal corporation is bound only when its agents keep within the limits of their authority. Negotiability will not validate obligations which are not binding, because of a want of power to issue them."

"The want of corporate power or the want of authority in municipal officers cannot be supplied by the unauthorized acts or representations of such officers."

"The duties and powers of the officers of a municipal corporation are prescribed by the statute, and every person dealing with them as such may know, and is charged with knowledge of the nature of these duties, and the extent of these powers."

Clark v. *The City of Des Moines*, 19 Iowa, 199.

Gould v. *The Town of Sterling* was a suit to recover installments of interest upon bonds alleged to have been executed by the town.

The act under which the bonds were issued provided, in general terms, that the supervisor and assessor of the town might borrow, on the faith and credit of the town, &c., and execute therefor a bond or bonds for the payment of the principal and interest of such loan, &c. But it was expressly provided : that the supervisor, &c., should have no power to do any of the acts authorized until the written assent of two-thirds of the resident persons taxed in said town had been obtained by such supervisor, &c., *and filed in the clerk's office of Cayuga County*, together with the affidavit of such supervisor attached to such statement, to the effect that the persons whose written assent was thereto attached and filed comprised two-thirds of all the resident taxpayers of said town, &c.

The court say : " The legislature have thus seen fit to declare that the taxpayers of the town included within its operation should not be charged with the burdens of the debt contemplated, except with the written assent of two-thirds of the resident persons taxed in said town, &c.; and those officers had no power to borrow such money, nor do any of the other acts authorized, until such assent was obtained and filed. That is an absolute prerequisite, and a condition precedent. Evidence of such assent was therefore necessary, as the basis and foundation of the right to contract the debt and execute the bonds in question. The statute does not state or declare that the affidavit mentioned shall be the evidence of the requisite assent, nor that it shall operate as a protection to the holder. The material and controlling requirement was the assent, in fact, of the taxpayers, expressed in writing signed by them."

The affidavit filed was not in the form required by the statute, and did not in terms state the facts required to be proved, and no other evidence of those facts was offered.

Each of the bonds upon which the action was brought stated upon its face that the requisite assent had been obtained and filed, and to each was attached a certificate of the proper officer, showing a compliance with the statute in this respect.

But the court held, "that the town was not bound by the representations of its officers upon the face of the bonds that such asssent had been obtained and filed. Such representation is of a fact which goes to the constitution of the agency, and which is of no effect as against the alleged principal. The plaintiff is bound to prove, affirmatively, that the written assent of the requisite number of resident taxpayers was, in point of fact, obtained, and filed in the county clerk's office, as required by the statute."

Gould v. *The Town of Sterling*, 23 N. Y., 439.

By the terms of the statute, this written assent was to be made a matter of public record, of which the public were bound to take notice, and whether there was such a record; and the facts disclosed by that record were as fully within the knowledge of the holder of the bond or coupon as they were within the knowledge of the officers of the corporation.

In the case of *Veeder* v. *The Town of Lima*, the supervisors of the town were authorized by law to subscribe for capital stock of a plank road company, and issue bonds of the town therefor; but the question was first to be submitted to the electors of the town, upon the written application of ten or more electors, by the supervisors posting up, ten days beforehand, in at least five public places of the town, notices of an election for that purpose; and said election was to be conducted in all respects as town meetings are required to be conducted; and if it appeared that a majority of the votes given were in favor of such subscription, the same was to be made in the manner provided for in the act, but not otherwise. It was further provided, that the supervisors, or one of them, should make an affidavit of the posting of said notices, which, with said application, should be *deposited* and *recorded* in the office of the town clerk of said town, and the same, or certified copies of them, or of the record of them, should be received in all courts of this State as conclusive evidence of the facts set forth therein.

In an action upon a bond alleged to have been executed by the town, in pursuance of this act: *Held*, that the absence of any record in the office of the clerk of said town, or any affidavit of notice, as required by the act, was sufficient to put purchasers of such bonds on inquiry; and it appearing that no such affidavit had ever been made, and notice was not in fact given as required by the act, and that an election was not held and certified in the manner prescribed, and it not appearing that the town had not done any subsequent act amounting to a ratification of the issuing of the bonds, or estopping it from denying their validity, the plaintiff could not recover, although the bond itself recited that, in pursuance of said act, the legal voters of the town had authorized the supervisors to subscribe for stock of said company, &c.

If there had been a valid election, and no record made, or if the record had been lost or destroyed, the town might have been bound; but the burden of proving the facts would be upon the holders of the bonds.

Veeder v. *The Town of Lima*, 19 Wis.; 280.

In the case of the *Sup'rs of Marshall County* v. *Cook*, an action of assumpsit was brought to recover upon interest coupons attached to a bond issued by the Board of Supervisors of the county, in payment of a subscription to the capital stock of a railroad company. The statute under which the subscription was made, required, as a prerequisite to the exercise of such power, that the *county court* should call an election to be held upon the subject of such subscription; and where a county is under township organization, the powers and duties of the county court in that regard devolve exclusively upon the Board of Supervisors of the county. And it was *held* that "where "such election is called by the wrong authority, the bonds "are void." "The fact that a majority of the voters at such an election were in favor of the subscription, will not relieve it of its illegality. Majorities are as powerless to divest a person of his property, as are minorities; that canbe done by neither, except in the manner prescribed by law."

All persons dealing in securities issued by a municipal corporation, are chargeable with notice of a want of authority in their creation.

Supervisors of Marshall County v. *Cook*, 38 Ills., 44.

In the case of the *Mayor* v. *Ray*, 19th Wallace, 468, on page 478, the Supreme Court of the United States have fully and clearly stated the general principles which apply to securities purporting to be issued by municipal corporations, in the following language :

"When the power is clearly given, and securities have been issued in conformity therewith, they will stand on the same basis, and be entitled to the same privileges as public securities and commercial paper generally."

"But where the power has not been given, parties must take municipal orders, drafts, certificates, and other documents of the sort at their peril. Custom and usage may have so far assimilated them to regular commercial paper, as to make them negotiable, that is transferable, by delivery or endorsement ; this quality renders them more convenient for the purposes of the holder, and has undoubtedly led to the idea, so frequently, but as we think erroneously, entertained, that they are invested with that other characteristic of commercial paper—freedom from all, and equitable defences, in the hands of a *bona fide* holder."

"But every holder of a city order knows that, to be valid and genuine at all, it must have been issued as a voucher for city indebtedness. It could not lawfully be issued for any other purpose."

"He must take it, therefore, subject to the risk that it has been lawfully and properly issued. His claim to be a *bona fide* holder will always be subject to this qualification. The face of the paper is notice to him that its validity depends upon the regularity of its issue."

"The officers of the city have no authority to issue it for any illegal or improper purpose, and their acts cannot create an estoppel against the city itself, its tax-payers or people. Persons receiving it from them know whether it is issued, and whether they receive it for a proper purpose and a proper consideration. Of course, they are affected by the absence of these essential ingredients, and all subsequent holders take *cum onere*, and are affected by the same defect."

"We consider these principles to be so sound and fundamental, as to make it a matter of surprise that a different view should have been taken by some jurists of eminent ability. The cases on the subject are conflicting and irreconcilable. It could not serve any useful purpose to make an elaborate review of them. We have endeavored clearly and explicitly, though briefly, to state the views which we entertain, &c."

The only authority given to the town of Coloma, by virtue of the 10th and 11th sections of the act of the legislature incorporating the Chicago and Rock River Railroad Company, is to subscribe to the *capital stock of said corporation.*

The railroad company was authorized to construct a road from Rock Falls to Chicago—130 miles. This line of road, authorized by the company's charter, is a unit —an entirety. Its capital stock was to be employed in building this line its entire length, and as one road. The subscription *authorized* by the charter to be made by cities, towns, &c.—is a subscription to the capital stock of this road.

There is no authority given by the charter for subscriptions, by towns, &c., to any stock based upon any mile, section, or division of said road. But the authority given is, by the act, strictly limited to subscriptions made to the capital stock of the entire enterprise.

Within this authority, so conferred upon towns, any exercise of power under it is binding upon them; and, if these bonds were issued *under the authority of the 10th and 11th sections of the charter*, upon a vote submitted to the legal voters of said town—which they decided affirmatively—to subscribe *fifty thousand dollars* to the capital stock of said railroad company, then, in the hands of *bona fide* holders for value, these bonds would be held valid, and the purchaser would be protected, notwithstanding any irregularity in the manner of submitting the vote, or issuing the bonds. This seems to be as far as any of the courts have gone, in any of the cases which have been before them.

In the case of *McWhorter et al.* v. *The People ex rel.*, the Supreme Court of the State of Illinois has given a construction to the provisions of the charter of this railroad company, authorizing subscriptions by municipal corporations, and has passed upon the legal effect of the vote taken in this case. The court held that "where the charter of a railroad company authorized certain municipalities "to subscribe to the capital stock of the company, only after "a vote of the legal voters of such municipality, a vote "taken to subscribe to the stock of a certain division of the "road, was unauthorized, and void." "And in this case, that "by the charter of the railroad company, the tax payers of "this town could only vote a subscription to the capital "stock of the company. This they were not called upon "to do, and have not done."

McWhorter et al. v. *The People ex rel.*, 65th Ill., 290.

The precise question presented by the record in this case, that is, whether authority given to a municipal corporation to take stock in a railroad company, would authorize a subscription to stock representing a portion of the road, was passed upon by this court, in the case of *Marsh* v. *Fulton County*, 10th Wall., 676.

In that case, it appeared that in February, 1853, the Mississippi and Wabash, Railroad Company was incorporated by the legislature of Illinois, and authorized to construct a railroad from Warsaw, on the Mississippi River, to the East line of the State. In February, 1857, an act was passed by that legislature, amending the charter of the company, by which the line of the railroad was divided into three divisions, designated as the Western, the Central, and the Eastern, and each division was created a new company; so that there were three distinct corporations in place of the original corporation.

Held, "that a subscription of stock and issue of county "bonds, authorized upon a vote of the people of the county, "to the original corporation, could not be legally made to "one of the three new corporations."

"Where county bonds to a railroad are issued without "any authority, they are invalid in the hands of an innocent purchaser. The authority to contract must exist "before any protection, as innocent purchaser, can be "claimed by the holder."

Marsh v. *Fulton County*, 10 Wallace, 676.

It would hardly seem to be necessary to introduce authorities in support of the position that all persons are conclusively presumed to have notice of what appears in public records, required by law to be kept for the inspection of the public generally. But in support of the position, we refer to *Backman* v. *Charlestown*, 42 N. H., 125, in which the question was directly adjudicated; and also to the case of *Veeder* v. *The Town of Lima*, 19 Wis., 280.

An examination of all the cases having any relation to the question presented by this case, it is believed, will show that there is not a single decision where the question was directly involved, which holds that where there is a want of power on the part of the officers or agents of a municipal corporation to contract or to make the subscription and issue the bonds, the corporation is bound by the unauthorized acts of such officers or agents; or that the corporation is estopped, by any recitals in the bonds, from questioning the want of power on the part of such officers or agents; and certainly no case can be found which holds that the corporation would be bound or estopped by the acts of such officers, or by the recitals in the bonds, when such want of power appears as a matter of public record.

Taking the leading cases in this court, usually relied upon as controverting the positions established by the foregoing cases, it will be found that in each of these cases, with scarcely an exception, the point decided was upon some matter questioning the regularity or legality of the proceedings of the corporate authorities in some mere matter of form, or else in some matter peculiarly or exclusively within the knowledge of the officers or agents of the corporation; or concerning which they were, by the express terms of the statute, anthorized to determine and decide.

Taking the cases in chronological order, we commence with the case of *Woods* v. *Lawrence County*.

So far as the question now under consideration is concerned, that case only decides that in a suit brought upon the coupons, a *bona fide* holder is not affected by the fact that the railroad company to which the bonds were delivered, sold them at a discount of twenty-five per cent., contrary to the charter, which forbade the sale of them at less than their par value.

Woods v. *Lawrence County*, 1 Black., 386.

In *Moran* v. *The Commissioners of Miami County*, it was held: "a county or municipal corporation being author-

"ized by statute to borrow money, and issue bonds for the "payment thereof, if the bonds be made and delivered, reciting the facts which show them to have been regularly "issued, the county is estopped to deny their regularity, or "to assert that they were not made in conformity to the "statute."

"Such bonds with interest warrants annexed, are commercial securities; the holder of them has a full title; and "as against one who has taken them in good faith, the "county cannot set up the equities which might have been "available against the original payee."

But in this case, it appeared in the proofs that certified copies of the proceedings of the board of commissioners were exhibited to the plaintiffs at the time they received the bonds, and that in those proceedings, there was nothing to indicate any irregularity, or to raise a suspicion that the bonds had not been issued pursuant to lawful authority.

Moran v. *Commissioners of Miami County*, 2 Black., 722.

In *Gelpecke* v. *The City of Dubuque*, the question presented was the constitutionality of the act of the legislature, authorizing the subscription to the railroad in question, and the issuing of the bonds in payment of such subscription. And the court held that the act was constitutional.

In the opinion given, the court say: "Where a corporation has *power* under any circumstances to issue negotiable securities, the *bona fide* holder has a right to presume they were issued under the circumstances which "give the requisite authority, and they are no more liable "to be impeached for an informality in the hands of such "holder, than any other commercial paper."

"The *power of the city to issue these bonds*, is, by the case, "conceded." The question decided by the case is, that the *authority* to issue the bonds being established, an informality as to the manner of issuing them, will not impeach their validity in the hands of a *bona fide* holder.

The court however, further say, that the qualifications coupled with the grant of power, are not in question; and that if they were, any irregularity in taking the votes of the electors or otherwise, in issuing the bonds, were remedied by the curative provisions of the subsequent act of January 28th, 1857.

Gelpecke v. *City of Dubuque*, 1 Wall., 175.

In the case of *Mercer County* v. *Hackett*, the law under which the bonds were issued, provided that all subscriptions should be made by the county commissioners, and should be made by them after, and not before the amount of such subscription shall have been designated and advised and recommended by the grand jury of said county; and such bonds shall in no case, or under any pretense be sold, assigned or transferred by the said railroad company, at less than the par value thereof.

On the part of the county, it was offered to be proved that the certificate made by the grand jury, was not a full compliance with the statute; and that the bonds had been sold for less than their par value. The case shows that the recommendation of the grand jury was a substantial compliance with the terms of the statute. And the court held that it was no defence to the claim of a *bona fide* holder, that the conditions of the statute had not been *formally* complied with, nor that the bonds had been sold at less than their par value.

Mercer County v. *Hackett*, 1 Wall., 83.

In *Meyer* v. *The City of Muscatine*, it was objected that the ordinance on which the vote for a loan was taken was void, because it submitted three distinct propositions in one, and in such a manner as to cut off an effective opposition from all voters who are not against the whole of the propositions. It was not claimed that the meeting was not regularly called; that the proposition was not submitted to the voters, or that a majority of the voters did not vote in the affirmative. The objection only went to the form of submission. The court held that the city could not set up that the vote was not taken in the form in which, under the charter, it ought to have been taken.

Meyer v. *The City of Muscatine*, 1 Wall., 384.

In the case of *Pendleton County* v. *Amy*, the question arose upon the sufficiency of the third plea, which denied that the question, whether the tax or subscription authorized by the acts had ever been submitted to or voted upon by the voters of Pendleton county, *in conformity with said acts.*

The court say: "If the right to subscribe be made de-" pendent upon the result of a popular vote, the officers of " the county must first determine whether the vote has been " taken as directed by law, and what the vote was. When, " therefore, they make a subscription, and issue county " bonds in payment, it may fairly be presumed in favor or " an innocent purchaser of the bonds, that the condition " which the law attached to the exereise of the power has " been fulfilled. We do not say this is a conclusive pre-" sumption in all cases, but it has more than once been " decided that a county may be estopped against asserting " that the conditions attached to a grant of power were " not fulfilled." And the court held "that the county hav-" ing exchanged the bonds for stocks, and held the pro-" ceeds for about seventeen years, they were estopped " from denying that the bonds were issued in compliance " with the conditions attached to the grant of power to " issue the bonds."

The Chief Justice, and Justices MILLER and FIELD, concurring in the judgment, do not assent to the views expressed.

Pendleton County v. *Amy*, 13 Wall., 297.

The case of *The City of Lexington* v. *Butler*, 14 Wall., 282, was one in which suit was brought upon coupons attached to bonds purporting to have been issued by the City of Lexington to the Lexington & Big Sandy R. R. Co., or order. By the provisions of the statute under which the bonds were issued, the city was authorized to make a subscription of $150,000, and issue bonds in payment thereof, on condition that a majority of the qualified voters of the city should cast their votes in favor of the subscription. An election was had, and a majority was in favor of the subscription, but only on condition that $1,000,000 should be first subscribed by others. The question decided arose upon a plea alleging the above facts, and averring, amongst other things, that the $1,000,000 had not been subscribed by others. Replication thereto, and demurrer to the replication.

It was decided by the court that the state of the pleadings was such, that it "was admitted that the corporation "defendants possessed the power to subscribe for the stock "and to issue the bonds;" and that, when a corporation has power, under any circumstances, to issue negotiable securities, the *bona fide* holder has a right to presume that they were issued under the circumstances which gave the requisite authority. It will be observed that, in this case, the only limitation upon the power of the corporate authorities to issue the bonds prescribed by the statute, was, that a majority of the qualified voters of the city should cast their votes in favor of the subscription; that a majority of the voters did so cast their votes; that the voters at said meeting attempted to impose conditions to such vote not authorized by the statute, and the performance or non-performance of which conditions would be peculiarly within the knowledge of the officers of the corporation, but not within the knowledge of the public generally, and not a matter of public record.

The question was further embarrassed by the additional fact which appeared in the case, that the bonds were issued by the corporate authorities, under an order of the

State Court made upon a petition for a *mandamus* filed by the R. R. Co. against them, to compel the issuance of the bonds in a case in which the power and duty of the officers to issue the bonds was adjudicated by the court.

City of Lexington v. *Butler*, 14 Wall., 282.

In the case of *Grand Chute* v. *Winegar*, it was held that, in a suit against a municipal corporation by a *bona fide* holder of its bonds, whose title accrued before maturity, the corporation cannot show, by way of defense, if the legal authority of the corporation to issue the bonds is sufficiently comprehensive, a want of compliance on its part with formalities required by the statute authorizing the issue of the bonds, or show fraud in their own agents in issuing them. The court say that the objections urged against the right of recovery fall within the principles decided in *Knox County* v. *Aspinwall; Mercer County* v. *Hackett; Meyer* v. *City of Muscatine;* and *Woods* v. *Lawrence County*.

Grand Chute v. *Winegar*, 15 Wall., 355.

We have already seen what were the principles decided in *Mercer County* v. *Hackett; Meyer* v. *City of Muscatine*, and *Woods* v. *Lawrence County*.

The case of *Knox County* v. *Aspinwall*, was a suit brought to recover the amount due upon certain coupons originally attached to bonds purporting to have been issued by the county.

The ground of defence urged by the county was, alleged irregularities and omissions to comply with the requisitions of the statute in respect to the notices to be given of the election to be held, at which a vote was to be taken for or against a subscription to the stock of the railroad company. How serious the alleged irregularities and omissions in the notice were, does not appear from the case as reported. Whether they amounted to anything more than a failure to comply with provisions of the statute, which were merely directory, and therefore non-essential, we are unable to say. But the court held that the board of county commissioners of the county which was authorized to make the subscription, and issue the bonds, was, from the character of its general powers, many of which were of a *quasi* judicial nature, the proper tribunal to determine whether or not the election had been properly held, and a majortty of the votes of the county cast in favor of subscription.

The court say very large powers are conferred upon the board of commissioners in matters relating to the police and fiscal concerns of the county.

" The auditor of the county is to act as its clerk, and " execute its orders. It has a common seal, and copies of " its proceedings signed and sealed by the clerk are evi- " dence in courts of justice, &c., and an appeal lies from its " decisions to the Circuit Court. This Board was one from " its organization and general duties, fit and competent to " be the depository of the trust confided to it."

Comm'rs of Knox County v. *Aspinwall*, 21 How., 539.

The case shows that the record of the proceedings of the board of commissioners, a public record, and one upon the truth of which the public had a right to rely, stated that an election had been held at the time required by law, and that the bonds were issued in accordance with the wishes of the voters of the county, expressed at that election.

So that, whatever may have been the alleged irregularities or omissions in the notice, the *bona fide* holder might be deemed to have relied not only upon the recitals in the bond, but also upon the truth of the public records of the county.

The case of *Lynde* v. *The County*, simply decides:

" The County Judge, being, by the code of Iowa, *the offi-* " *cer designated to decide* whether the voters have given the "required sanction to the borrowing of money and issuing "of bonds," his execution and issue of bonds, setting forth on their face that all of said bonds are issued in accordance with a vote of the people of said county, and that the people have voted the levying of sufficient taxes, &c., is conclusive evidence against the county of the popular sanction, so far as respects holders *bona fide*, and for value.

And from this judgment the Chief Justice, and Justices FIELD and MILLER, dissented; holding that the County Judge was only an agent of the county, acting under a special and limited authority, and he could not enlarge that authority by any representation that he possessed powers that were never conferred.

Lynde v. *The County*, 16 Wall, 6.

The latest, and perhaps the strongest case that can be found in favor of the position that the corporation is bound by the recitals in the bond, is the case of *St. Joseph's Township* v. *Rogers*, 16 Wallace, 644.

Rogers brought assumpsit against the township to recover the interest on certain railroad bonds alleged to have been issued by the township.

The township set up in defense that the bonds were not properly issued and are void—1st, because a majority of the legal voters of the township did not vote in favor of the subscription at the meeting, notified and held for the purpose of voting on that question—2d, because the meeting was notified and held before the act was passed for an election.

It was held by the court that the legislature, in adopting the phrase "a majority of the legal voters of the township," intended to require only a majority of the legal voters voting at the election; or at least that a majority of the voters voting at that election would be presumed to be a majority of the voters of the township, in accordance with the decisions in the cases of the *People* v. *Warfield*, 20th Ills., 159; *Louisville & Nashville R. R.* v. *The County of*

Davidsox, 1st Sneed, 637; and also the case of *State* v. *Mayor of St. Joseph's*, 37 Missouri, 270.

And as to the second ground of defense, it was held, that by the act under which the subscription was made, and the bonds issued, it was provided that where an election had already been held, and a majority of the legal voters of the township were in favor of a subscription to said railroad, then no other election need be had. And further, that the defective subscription, if any such defect existed, was cured by the act in question.

Having decided the questions raised by the defense, upon the grounds above stated, the court go on to say:
" Another answer may be given to the objection, quite as
" satisfactory as either of the others, which is, that the
" *14th section of the act makes it the duty of the*
" *supervisor, who executes the bonds, to determine the*
" *question* whether an election was held, and whether
" a majority of the votes cast were in favor of the sub-
" scription; and inasmuch as he passed upon that ques-
" tion, and subscribed for the stock, and subsequently exe-
" cuted and delivered the bonds, it is clearly too late to
" question their validity, when it appears that they are in
" the hands of an innocent holder."

It will thus be seen that in no case has a municipal corporation ever been held liable upon this class of securities, where there was a *want of power* on the part of the officers of the corporation to issue them, and more especially is this true where such want of power appeared as a matter of public record, as it does in this case.

In the case at bar, the law authorizes the town, upon a vote of a majority of its legal voters, in favor of the proposition, to subscribe to the capital stock of the *whole enterprise*. This is the power and authority given to the town. This power they can exercise. They can exercise none other. Instead of this authority being acted upon, they submit a vote authorizing a subscription to the capital stock of one division of the road, a division not authorized by the charter.

The objection to the bonds is, that the town had no power or authority to submit the vote to subscribe for stock in the first division of said road. The only power or authority they possess in the premises, is found in the charter of this Railroad Company. The power they have attempted to exercise, is not there given to or conferred upon them. And the defect, or want of power, complained of, not only appeared on the town records, but it also appeared by the record filed in the office of the County Clerk, as required by the provisions of the charter of the Railroad Company—the only law authorizing the subscription to be made, or the bonds to be issued.

C. M. OSBORN,

Att'y for Plaintiff in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM A. D. 1875.

THE TOWN OF COLOMA,
Plaintiff in Error,
vs.
DAVID W. EAVES.
(No. 825.)

ARGUMENT OF JAMES GRANT,
For Defendant.

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For Defendant.

STATEMENT OF THE CASE.

The counsel for the plaintiff in error has failed to state many facts material in this controversy. The town of Coloma received from the Chicago and Rock River Railroad Company, in consideration of its subscription of $50,000 in bonds to that company, certificates for 500 shares, of $100 each, in the capital stock of that company, which certificates of stock the town still retains, without ever having parted with any of its rights to the same (see record, p. 22). The bonds were delivered to the railroad company on the 30th day of December, 1872, by the supervisor of the town of Coloma (see record, p. 22).

The bonds recite this bond is issued under and by virtue of the law of the State of Illinois, entitled, "An act to incorporate the Chicago and Rock River Railroad Company, approved

March 24, 1869, and in accordance with a vote of the electors of said township of Coloma at a regular election held July 28, 1869, in accordance with said law, and under a law of the State of Illinois entitled an act to fund and provide for paying the railroad debts of counties, townships, cities and towns in force April 16, 1869" (see record, p. 20).

The record further shows that "at a special town meeting, held in the town of Coloma January 3, 1871, the following resolution was unanimously passed :

"WHEREAS, At a special town meeting, held in the town of Coloma, in the county of Whiteside and State of Illinois, said town voted to subscribe fifty thousand dollars to the capital stock of the Chicago and Rock River Railroad Company, and

WHEREAS, A special town meeting was called in said town of Coloma on the 3d day of January to vote for or against the issuing to said company the sum of $7500 of said subscription, now, therefore, be it

Resolved, That the supervisor of the town of Coloma is hereby ordered to issue no part of the $50,000 subscribed to the capital stock of said company until said railroad is built from Amboy to Rock Falls and the cars have been run thereon. And be it further

Resolved, That we are unanimously in favor of issuing the full amount of the said fifty thousand dollars subscription immediately upon the arrival of the first train of cars on the Chicago and Rock River Railroad from Amboy to Rock Falls. And be it further

Resolved, That the town clerk is hereby required to record the above preamble and these three resolutions on the records of the said town of Coloma (see record, p. 25).

And the bonds did not begin to bear interest until the 15th of January, 1872, about three weeks after their delivery to the company. This is shown by the first coupon, which was for the interest for the five and one-half months elapsing between the 15th of January and the 1st of July, 1872.

At the time of the delivery of the bonds the Chicago and Rock River Railroad had been completed from the town of Amboy into the town of Coloma, and within a few weeks after the delivery of the bonds, the road was in operation between Amboy and Rock Falls (see record, p. 25).

*The bonds were registered in the office of the Auditor of State of the State of Illinois on the 2d day of January, 1872, pursuant to the provisions of an act entitled "An act to fund and provide for the paying the railroad debts of counties, townships, cities and towns in force April 16, 1869."

This act provided for the registration of all the bonds issued by municipalities to railroads with the State Auditor, with this proviso, that "it shall not be lawful to register any bonds under the provisions of this act, or to receive any of the benefits or advantages to be derived from this act, until after the railroad in aid, of the construction of which the debt was incurred, shall have been completed near to such county, township, etc., and cars shall have run thereon, and none of the benefits, advantages or provisions of this act, unless the subscription or donation creating such debt, was first submitted to an election of the legal voters of said county, township, etc., under the provisions of the laws of this State, and a majority of the legal voters living in said county, etc., were in favor of such aid subscription or donation." And the act further requires that, precedent to the registration of bonds, the supervisor of the township must certify, under oath, to the auditor, that all the preliminary conditions in the act required have been complied with.

Public Laws, State of Illinois, 1869, page 316.

The plaintiff was also a *bona fide* purchaser of the coupons sued upon before maturity and without notice (see record, p. 24). And the evidence further showed that the bonds were all sold in the market for 95 cents on the dollar.

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* There is an error in the record as to date of delivery—the delivery was made on the 30th of Dec., 1871, not the 30th of Dec., 1872, as this will appear from the other dates.

ARGUMENT.

The plaintiff in error contends that, because of the mere irregularity that the proposition contained in the notices of election, and voted upon as at the election, was for a subscription to the capital stock of the first division of the Chicago and Rock River Railroad Company, instead of a subscription to the capital stock of the Chicago and Rock River Railroad Company, no subscription was authorized by the town to that company, that the supervisor had no authority to issue the bonds, and that they are void.

And this it claims, notwithstanding the town had, at a special town meeting, held subsequent to this election by a preamble and resolutions unanimously adopted, recognized that the subscription had been made to the Chicago and Rock River Railroad Company, and authorized the supervisor to subscribe for the stock voted for in that company ; that it then furthermore authorized the issue of the bonds to that company by the supervisor, upon certain conditions, which were substantially complied with at the time of their issue ; notwithstanding the bonds recite compliance with both the charter of the railroad company and the public law of 1869, which authorizes the issue of bonds by the town, notwithstanding they bear the certificate and seal of the Auditor of State that they have been issued according to law ; notwithstanding the railroad has been completed ; notwithstanding the town has received and still retains the certificates of stock in the railroad company, and that the bonds have passed into the hands of *bona fide* holders for value.

The decisions of this court as to the validity of municipal securities have been uniform and consistent. It has decided not only that mere irregularities in the execution of the power to issue such securities will not invalidate them, but that so long as they are genuine instruments, reciting compliance with the law, and there is a law to authorize their issue, they are valid in the hands of *bona fide* purchasers.

It is settled that where the power is clearly given to issue, and securities have been made in conformity therewith, they will stand on the same basis and be entitled to the same priviliges as public securities and commercial paper generally.

It is conceded that authority was clearly given to the Town of Coloma, by the charter of the C. & R. R. R. R. company, to subscribe to the capital stock of that company and to issue bonds to pay its subscription.

But it is claimed that under the notices and vote no authority was given to the Supervisor to subscribe for the stock and issue the bonds. That by the reason of the record of the notices and vote, the holders of the bonds in question had notice of this want of authority. An examination of the bonds and the law discloses no variance between them and no irregularity. The bonds recite upon their face that they have been issued by virtue of law and in accordance with a vote of the people of the Town. The law authorized the Town to issue the bonds to the company and under certain conditions vested the Supervisor with the power to determine when those requirements made had been complied with. The bond under the seal of the and signature of its Supervisor and Town Clerk recites a full compliance of the law. And further than the bond and the law, this Court has never compelled a bona fide holder to look. All pre-requisites are personal.

These bonds were moreover registered in the office of the State Auditor. Before they could be so registered it must be proven, to the Auditor, that the pre-requisites of the statute were complied with. And the Auditor certified the fact of the registration upon each bond. This section of the law of registration could have had no other object and purpose than to prevent the fraudulent and unlawful issue of bonds, and to give to purchasers an evidence of the genuineness of the bonds upon which they could rely. And the Auditor in such case becomes the agent of the Town, and his acts authorized by law, are binding upon it.

Town of Queensburg vs Culver, 19 Wall., 83.

These bonds have been put upon the market, containing a solemn recital upon the part of the Town, of their being issued in compliance with law, and bearing the sealed certificate of the Auditor that they had been so issued.

Can the payment by the Town then be avoided?

The decisions of this Court have declared these municipal securities in the highest degree *negotiable*. The holder is not bound to look beyond the law and the face of the bond.

Any other holding, such as to make an examination into the records of the municipality to see that the law had been strictly complied with, would destroy the value of the security and defeat the purpose of their issue. The State Courts have constantly held that all the conditions and qualifications upon the power to issue, must be complied with or the bonds are void.

And this Court has constantly refused to follow these decisions of the State Courts against the validity of these bonds.

While it is true that the authorized acts of agents will not bind a municipal corporation, yet if that agent is clothed with authorithy by law to decide as to any matter or fact giving him authority, his decision is conclusive upon the corporation.

The case of Mayor vs Ray, 19 Wallace, 468, is relied upon by the plaintiff in error, to overthrow the validity of the bonds now in controversy. The securities issued in that case were not bonds, but mere city warrants, or certificates of indebtedness. These warrants were drawn payable to bearer, by the Mayor and Recorder, on the Treasurer, and by him endorsed, as certificates of indebtedness to the creditors of the corporation. The character of the city gave it no power to borrow money, and there was no ordinance of the city authorizing the issue of such securities. They were issued by the executive officers of the city without any authority of law whatever, and they recited no authority. Yet in this case four of the then eight Judges of this Court, held that in the hands of *bona fide* holders these warrants were negotiable, and the holder could recover.

It is well settled that there is a clear distinction in law between municipal bonds and such warrants which are mere certificates of indebtedness. The latter are only so far negotiable as to pass title by endorsement on blank, or delivery, while the latter alone in the hands of a *bona fide* holder cut off the equities between the parties.

Dillon on Municipal Corporation, page 495, and cases cited.

"Ordinary warrants drawn by one officer on another of the same corporation negotiable in form, may be made by the proper officers, and in many of the States such instruments may be transferred, by delivery, or endorsement, and the holder sue thereon in his own name. Yet they are not commercial or negotiable paper in the hands of holders so as to exclude inquiry into the legality of their issue or to preclude defenses thereto."

Supra page, 495.

And when in Mayor vs Ray, Justice Bradley says: "But where the power has not been given parties must take municipal orders, drafts, certificates, and other documents of the sort at their peril. Custom and usage may have so far assimilated them to regular commercial paper as to make them negotiable, that is transferable by delivery, or endorsement. This quality renders them more convenient for the purposes of the holder, and has undoubtedly led to the idea so frequently, but as we think, erroneously entertained, that they are invested with that other characteristic of commercial paper, freedom from all legal and equitable defences in the hands of a *bona fide* holder," &c. He refers to municipal warrants as distinguished from municipal bonds. He declares that there is a clear distinction between such securities which are so issued and such as are issued by legislative authority.

That the latter will stand upon the same basis and be entitled to the same privileges as public securities and *commercial paper* generally.

The counsel for the town has cited Dillon and Cooley to sustain the position the purchaser must look to the authority of the agent from the municipality, and that he is chargeable, with notice, of all defects in that authority appearing from its records. In one word: that all the pre-requisites of the statute must be strictly complied with. The position taken by Judge Cooley is based upon Gould vs Sterling, 23 N. Y., 435, and Cooley Const. Lim., 215. This decision the Court of Appeals themselves admit is not followed or approved by the Supreme Court of the United States, as this Court has held the bonds in that case held void, to be valid in the hands of a bona fide holder.

People vs Mead, 36 N. Y., 225.

Judge Dillon in the second edition of his work on Municipal Corporations, retreats from the position cited by opposing counsel, from first edition. He now sums up the general result of the decision, as stated by Justice Clifford in St. Joseph vs Rogers, cited hereafter, if issued in pursuance of a power conferred by the Legislature, are valid *commercial instruments.* Such a power is frequently conferred, to be *exercised in a special manner.*

St. Joseph vs Rogers, 16 Wall.

The other authorities cited by plaintiff utterly fail to sustain his position, with the exception of a few State Court authorities, which have been overruled by this Court.

Clark vs Des Moines, 19 Iowa, 199, was an action upon city warrants issued without any authority of law, which class of securities are clearly distinguished from municipal bonds issued by authority of law.

Dillon on Municipal Corporations cited *supra*, and
Mayor vs Ray, 19 Wall, 468.

The very same class of bonds declared void by the Supreme Court of Illinois in Cook vs Marshall County, 38 Ill., 44—because the election was called by the County Court and not by the Board of Supervisors, as clearly required by the law authorizing the issue of the bonds, were held valid by this Court in Schenck vs Supervisors, 5 Wallace, 772, and in Knox vs Aspinwall, 21 Howard, 542—the same principal was declared by this Court where notices were not given of an election, as required by law, that "the bonds on their face import a compliance with the law under which they were issued." "The purchaser was not bound to look further for evidence of a compliance with the grant of power." In both these cases the same claim, as in this case, that the municipal officers acted without authority of law, and that their bonds were void.

The case of McWhorton vs. The People, 65 Illinois, arose out of a mandamus to compel a town to issue bonds to the Chicago & Rock River Railroad Company, where the notices and the proposition voted for were the same as in the case at bar. The Illinois Court refused to allow the mandamus, principally on the ground that the registry act of 1869, had not been complied with, which requires that a majority of the voters living in the town should vote for the subscription. They decide that voting a subscription to the first division of the Chicago & Rock River Railroad Company is not a subscription to the Railroad Company as an entirity as required by law, and cannot be enforced.

This is an entirely different proceeding from that now before this Court. It is between the original parties—the questions of estoppel and of the rights of a *bona fide* holder do not arise at all. In our case we have the decision of the officer authorized by the statute to determine whether the law has been complied with in favor, but in the case cited, against the bonds.

This court has declared that such a proceeding is essentially different in the questions involved.

Knox vs. Aspinwall, 21 Howard, 544.

Moreover in this case not only has the supervisor the legally constituted authority but also the town of Coloma at a town meeting called to consider the question of issuing these bonds recognized the fact that the vote was to subscribe to the capital stock of the corporation as an entirity and authorized the supervisor to issue the bonds and make the subscription under the circumstances which he did. And ratifiation is equally binding with original authority.

Shenck vs. Supervisors 5 Wall. 781.

This decision being rendered after the negotiation of the bonds in controversy, and involving a question of general law is not binding upon this court.

Butz vs. Muscatine 8 wall. 575.
Olcott vs. Supervisor 16 Wall 678.
See also Pine Grove vs. Talcott, 19 Wall, 666.

The only decision of this Court relied upon by plaintiff, except that of Mayor vs. Ray, considered above, is Marsh vs. Fulton County, 10 Wall. 676. This case is vastly different from the one at bar. The contrast is difficult from their having nothing in common. The bonds in that case contained no recital of compliance with the law. The vote of the people and the law authorized their issue to one corporation, and they were issued to another, and entirely different corporation They bear illegality on their face, and all the world had notice of it. The law and the vote of the people authorized the issue of bonds to the Mississippi & Wabash Railroad Company. In this case the law authorized the issue of the bonds to a certain Company when certain facts should appear to the Supervisor. The bonds were issued to that Company and recite their compliance with the law. The vote of the people was to issue the bonds to the first division of that Company, but there was no such corporation as the first division. No defects whatever appear on the face of the bonds: and, moreover, the people of the Town have by their resolutions of January 3d, 1871, authorized and confirmed the action of the Supervisor. And in the corporation as an entirity they have all the rights then they would have had in a mere division, and they have suffered no injury. The notices and the vote were simply irregular, and do not go to the essence of the authority.

1. The Court has repeatedly held that the *bona fide* holder need look no farther than the recital of the bond. Say this Court in Mercer County vs. Hackett, 1 Wall. 83, they the bonds are on their face perfect and complete, exhibiting no defect in form or substance, and the evidence offered is to show the recitals on the bonds are not true; not that no law exists to authorize their issue, but that the bonds were not made "in pursuance of the acts of the Assembly" authorizing them. We have decided in the case of Commissioners of Knox County vs. Aspinwall, that where bonds on their face import a compliance with the law under which they are issued, the purchaser is not bound to look farther."

The subscription in the case last cited was only to be made after the amount was designated by the Grand Jury. The Jury never designated any amount whatever. Bonds were however issued by the Board of County Commissioners, and they were held valid in the above cited case.

The Grand Jury did make a recommendation which was a matter of public record, but not a legal designation of the amount.

According to the doctrine of the counsel for the plaintiff, the bonds were issued without authority, and they were void. But this court holds them valid. The purchasers had notice from the town records of the want of authority.

Even the requirement of an election is not such a prerequisite as goes to the essence of the authority. This Court has held that even though this requirement has not been complied with at all, if the bonds recite on their face a compliance, according to law they are valid.

In Grand Chute *vs.* Winnegar, we have a case far stronger than our own in favor of the municipal corporation. A demurrer was sustained to a plea that no election was ever held, as required by the act authorizing the issue of the bonds.

The court refused to receive in evidence the court records, showing that numerous suits had been brought upon the bonds in controversy and no recovery had upon them previous to the purchase by plaintiff.

In this case, the strongest language used by this court in the cases of Snow *vs.* Aspinwall, Mercer County *vs.* Hackett and Gelpecke *vs.* Dububuge is quoted with approval. They say, "the bonds, on their face, import a compliance with the law under which they were issued, and the purchaser was not bound to look further for evidence of a compliance with the condition of the grant of power."

In this case, according to the pleadings, no election was had, and this was insisted upon by counsel for the corporation as making the bonds void; but it was overruled by this court.

It is further held, in Van Hastrup *vs.* Madison City, 1 Wallace, 291, where the law authorizing the issue of the bonds required a petition of two-thirds of the citizens precedent to the issue of the same, and this was not complied with, that the bonds in the hands of a *bona fide* holder were valid.

Finally, we have the case of Pendleton County *vs.* Amy, 13 Wallace, 297, where the act authorizing the issue of the bonds provided that the real estate holders residing in the county should so vote by a majority at such times as the county court might appoint, and there had been no submission of the question of subscription and borrowing money to the real estate holders whatever, and no vote had by them on the question, in this case, moreover, there was no recital in the bonds that they were issued in accordance with law, nevertheless, because the county had received its stock and retained the same, it was held estopped from setting up the want of authority in its agents to issue the bonds, and the previous cases are cited and approved which decide that municipal corporations are estopped by the recitals in their bonds from denying the acts of their agents.

And even were the bonds issued without any authority whatever, they would come within the case of Pine Grove *vs.* Talcott, 19 Wall., 666. Here the court cite as the law, that " it must be further borne in mind that the invalidity of contracts made in violation of statutes is subject to the equitable exception, that although a corporation, in making a contract, acts in disagreement with its charter where it is a simple question of capacity or authority to contract, arising either on a question of regularity of organization or of power conferred by the charter, a party who has had the benefit of the agreement cannot be permitted, in an action founded on it, to question its validity. It would be in the highest degree inequitable and unjust to permit the defendant to repudiate a contract the fruit of which he retains.

Pine Grove vs. Tallcott, 19 Wall., 666.

And further, where the power is given by statute to a municipal officer to decide whether the statute reccited in the bond has been complied with, his decision is final and conclusive.

Township of St. Joseph vs. Rogers, 16 Wall. 944.

Knox vs. Aspinwall, 21 Howard, 942.
Mercer County vs. Hackett, 1 Wall., 83.
Meyer vs Muscatine, 1 Wall. 384.
Grand Chute, vs. Winnagar, 15 Wall., 355.

This court has finally construed a charter of a railroad company containing the same provision as to a vote of the people, giving precisely similar power to the supervisor, and where the same objection was made to the validity of the bonds.

In this case, also, a transcript of the record of the vote was required to be filed with the county clerk.

The election was held prior to the passage of the charter of the corporation. No transcript of the vote was filed as required by the law.

The act required that a majority of the legal voters of the township should be in favor of the subscription to the railroad, only seventy-five out of three hundred legal voters in the town ship voted at the election.

The counsel for the corporation insisted that a majority of the legal voters not having voted for the subscription, the bonds were issued without authority and were void. He cited Gould *vs.* Stirling, 23 N. Y., 458, and Cooley on Constitutional Limitations., approving that case as a statement of the law, and claimed that it was the duty—as is also laid down in Kidder *vs.* Lima, 19 Wis., 280, cited in this case—of the purchaser to examine the records, and that he was chargable with notice of what the records declared—that the law had not been complied with.

The court say that "sucha power (to issue bonds payable to bearer) is frequently conferred, in a special manner, subject to certain restrictions, regulations, conditions or qualifications, but if it appears that the bonds show by their recitals that the power was exercised in the manner required by the legislature, proof that *any* or *all* of those recitals will not constitute a defence to the corporation in a suit upon the bonds, if it appears it was the sole province of the municipal officers who executed the bonds to decide whether or not there had been an antecedent compliance with the regulation, condition or qualification, which it is alleged was not fulfilled."

And further: "Another answer can be given to the objection (that there was no preliminary election) quite as satisfactory as either of the others, which is that the fourteenth section of the act makes it the *duty* of the Supervisor who executed the bonds, to determine the question whether an election was held and whether a majority of the votes were cast in favor of the subscription, and inasmuch as he has passed upon that question und subscribed for the stock, and subsequently executed and delivered the bonds, it is clearly too late to question their validity, where it appears, as in this case, that they are in the hands of an innocent holder."

Viewed in any reasonable light, the Court is of the opinion that the Plaintiff is an innocent holder for value, and the loss even of the Supervisor failed in his duty to his constituents can not be cast upon the *bona fide* creditors of the township: so in this case, where the power and the duty of the Supervisor under the Railroad Company's Charter are the same, his decision upon the question of compliance with the law is final, and can not be denied.

In this case moreover, as a matter of fact, no more than what constituted according to the notice the first division of the Chicago & Rock River Railroad, was ever built. The notice itself shows that this division was merely created by the Railroad Company, and not by act of the Legislature. They subscribed with the knowledge that the first Division might be abolished by the same authority which created it. It has suffered no prejudice through the subscription to the Company as an entirety. It has construed its own action in favor of the holders of the bonds, and authorized the action of the Supervisor. This Court has never compelled a *bona fide* holder to go farther than the law and the face of the bond. It had never yet during this twenty years contest as to the validity of municipal securities declared a bond void which recited a compliance with the law of its issue. It has never allowed a municipal corporation which has entered into a contract authorized by law to return the proceeds, and then declare that its agents had no authority to make the contract. Much the less has it ever allowed a negotiable bond authorized by law, in the possession of a *bona fide* holder, to be repudiated by the corporation as having been issued without authority by its agents while it holds in its bonds the money or its equivalent.

The plaintiff in error is seeking through a legal technicality to avoid the payment of an honest debt; and such proceedings have never yet recieved the support of this Court, and never will.

JAMES GRANT,
For Defendant.

The authority to subscribe
~~to~~ the capital stock of the
Corporation — the Chicago
& Rock river Rail Road Co —
Rock Falls — to Chicago
— 130 miles in length — only —
a small division has been
built —